IN THE

Supreme Court of the United States

OCTOBER TERM, 1922.

No. [redacted]214

SUPREME LODGE KNIGHTS OF PYTHIAS,
Petitioner,

vs.

GEORGE O. MEYER,
Respondent.

PETITION FOR WRIT OF CERTIORARI AND PETITIONER'S BRIEF.

WARD H. WATSON,
SOL H. ESAREY,
Attorneys for Petitioner.

B. A. HARDIN PRINT, INDIANAPOLIS

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No. ————.

PETITION FOR WRIT OF CERTIORARI.

To the Honorable, The Supreme Court of the United States:

The Supreme Lodge Knights of Pythias, in support of this, its petition for a writ of certiorari to be directed to the Supreme Court of the State of Nebraska to review a judgment rendered by said Supreme Court of the State of Nebraska on the 4th day of October, 1922, and from the judgment of said Supreme Court of the State of Nebraska affirming and confirming said judgment, by its order overruling your petitioner's petition for a rehearing which was duly filed within the time provided by the statute of said state and which was duly considered and decided by said court on the 20th day of November, 1922, affirming the judgment and decree of the District Court of Otoe County in the said State of Nebraska, for the respondent herein,

who was the plaintiff, in the sum of $———— respectfully shows:

1. That this action was begun by a complaint on behalf of the respondent against the petitioner upon a certificate of insurance, alleging that the respondent had executed to the assured a certificate of insurance in the sum of $2,000; that the assured maintained his good standing in the order and that the respondent was designated in said certificate as the beneficiary thereof and that the petitioner agreed to pay said sum of $———— upon satisfactory proof of the death of the assured; that the assured had done all things required of him to be performed, and that the defendant refused to pay said insurance or any part thereof. Judgment was demanded for the amount of the certificate together with attorney's fees.

2. That the defendant, your petitioner, duly filed its answer to said complaint alleging that it duly issued the certificate sued upon; that said defendant was duly authorized to transact business in the State of Nebraska. That said defendant was created by a special act of Congress and that its powers were given to it by virtue of said act of Congress; that it had been acting under said powers and by virtue thereof and that said powers can only be determined finally by the courts of the United States.

Said answer further admitted that the assured had died and further alleged that said certificate was not an absolute insurance on the life of the assured but that it was conditional and subject to the regular payment of monthly premiums to become due and to all changes in the laws of said defendant that might thereafter be enacted under and by virtue of said special act of Congress.

Said answer further alleged that neither the assured or any other person paid the assessments and dues required from said assured under the terms of said certificate from January, 1911, until the death of the assured. That by reason of the neglect and refusal of the assured to pay said assessments and dues said certificate became forfeited under the terms of the statutes of said defendant.

Said answer further alleged that under and by virtue of the right and power of said special act of Congress and the acts amendatory thereof the defendant promulgated and made an increase of rates of insurance and the amount required to be paid by the assured and of those of his class, which rates became effective January 1, 1911. and of which said assured was duly notified and informed; that said increase of rates was necessary for the maturing of the certificates held by the assured and all others who held certificates of insurance therein; that the defendant had the authority and power, to enact, adopt and pass the legislation and by-laws increasing said rates. That said rates were obligatory upon the assured therein as well as all others who were members of said Insurance Department; that said increase of rates and the action taken therein by said defendant were in the nature of internal regulations and management of the Insurance Department of said defendant, and were binding and obligatory upon the entire membership of said Insurance Departments regardless of where they lived, or the State in which they resided, and no member or class of members had any greater right or privilege than any other member or class of members, and that notwithstanding the duty and the obligation of the assured to pay the said rates, he purposely failed, neglected and refused to

pay any part of said dues or assessments from January 1, 1911, until his death April 11, 1916.

Said answer further alleged that the right and the power of the defendant to increase said rates were expressly adjudicated and determined and the validity of such rates was settled by a judgment and decree of the United States District Court for the District of Indiana, in a suit therein brought by Joseph Holt who was a member of said Insurance Department and held a certificate similar in all respects to the certificate of the assured which is involved in this action, and others on behalf of themselves and of all other members of said Department similarly situated against the defendant herein in which judgment it was finally decided and determined that the defendant herein had the right, power and authority to make such change and increase in its rates and that said increase was reasonable, proper and necessary, and that said defendant had a representative form of government at the time the said rates of insurance were increased; that the said Holt et al., plaintiffs in said suit were members of said Insurance Department in the same class as the assured herein. That said U. S. District Court had full power and jurisdiction of all matters involved in said suit and of the parties thereto and that its decision therein was final, conclusive, and *res judicata* of all matters involved in said suit, among which was the validity of the rates so fixed and the validity of all the laws enacted in reference to the increase of rates.

It was further alleged that by reason of said judgment and decree of said U. S. District Court for the District of Indiana, the assured herein and his beneficiary herein are barred and estopped from again litigating the question of the validity of said increase of rates or the question of the

representative form of government, or the obligation of the assured to pay said rates which questions are decisive of the questions involved in this case; that said decision remains in full force and effect, and is in no manner changed, modified or reversed, and which decision adjudged and finally determined that this defendant had and maintained a representative form of government at all times and that it had authority, right and power to increase its rates as alleged heerin and that said increases were binding and effective on all its members and that a failure, neglect or refusal of any member to pay such increased rate resulted in and caused a forfeiture of his certificate of membership, the same having been finally approved and affirmed by the Supreme Court of the United States.

Said answer further alleged that said defendant claimed the benefits of Article 4, of Section 1, of the Federal Constitution guaranteeing full faith and credit to said judgment of the U. S. District Court for the District of Indiana, and also that it claimed the benefits of Section 905 revised statutes of the United States extending the full faith and credit clause of said Federal Constitution to the Courts of the United States, situated within the districts of the various states and also claims the right to have said judgment duly credited by the Courts of the State of Nebraska that said judgment had within the district of the United States District Court for the District of Indiana.

Said answer further alleged that the authority and power of said defendant to increase its rates and that said legislation was duly and validly enacted by said defendant at the time it so increased its rates was adjudicated and finally decided and determined by the Supreme Court of the United States on June 12, 1916, in a cause therein pending on writ

of error from the Court of Civil Appeals of the State of Texas, wherein the Supreme Lodge Knights of Pythias, being defendant, was plaintiff in error and Mims was defendant in error; that said Mims was a member of said fendant's Insurance Department of the same class as the assured herein; that said action in said Mims case was originally commenced in the District Court of Dallas County, State of Texas, May 19, 1911. That the plaintiff in said cause alleged that said increase of rates, being the same increase involved as in this action was alleged and that the law enacting such increase was wrongfully and illegally passed; that the answer of the defendant therein, being the defendant herein, alleged that said laws were just, reasonable and necessary, and that they were duly passed in accordance with the power and authority given under the Federal Statute creating the defendant and that the plaintiff's failure to comply with said laws caused a forfeiture of his insurance and his rights thereunder.

Said answer further shows that said cause was finally decided by the said Supreme Court of the United States which court had full power and jurisdiction over all matters involved in said suit and of the parties thereto, and that said laws were adjudged valid and binding upon all members of said Insurance Department, and the defendant herein alleged that said decision is decisive of the rights of the plaintiff herein, and that the plaintiff is barred and estopped from litigating said questions or denying the conclusiveness of said decisions in said case.

Said answer further alleged that the application of the assured herein and the certificate sued upon in this case were both conditioned upon the obligation of the assured to abide by and do all things required by the laws then in force

and the laws that might thereafter be enacted governing the Insurance Department. That the claim of the plaintiff herein is governed by and is dependent upon the defendant's charter of incorporation under said Federal Statute and the rules, laws and regulations adopted and promulgated by the defendant under and by virtue of said Federal Statute, and that the plaintiff is now estopped from denying or controverting the right of the defendant to enforce the rates so enacted and promulgated.

3. That the plaintiff in reply to said answer alleged that in this action there is not involved the construction of any Federal Statute, or any question arising under the laws of the United States which only the courts of the United States can determine; that the assured did not fail, neglect and refuse to pay the assessments required under his certificate at any time, and that his certificate did not become forfeited.

Said reply further alleged that said defendant was not empowered or given authority to make an increase of rates of insurance so as to affect the certificate of the assured, and further denied that any change of rates was made affecting or which was binding upon the assured at any other time, and further denied that any attempt to change the rates was ineffective and that the certificate so held by the plaintiff was in full force and effect at the death of the assured, and that no adjudication was ever had in any court binding upon plaintiff or upon the assured in his lifetime.

Said reply further alleged that in the case of *Meyer v. Supreme Lodge*, which case was appealed to the Supreme Court of the State of Nebraska and which involved the right, power and authority of the defendant to make, change or increase the rates of insurance, the validity of the rates

of the defendant and as to whether the defendant had a representative form of government, which case was decided April 30, 1920, the defendant was without any right, power or authority to make any change or increase of its rates and that said rates so made were void and that defendant did not have a representative form of government; that said judgment and opinion of said Supreme Court of the State of Nebraska is unreversed, and in full force and effect, and is *res judicata* of the questions raised in the defendant's answer.

4. That the record, a certified copy of which is presented herewith, shows no conflict of evidence the respondent relying solely upon the ground that the undisputed facts compel the legal conclusion that said increase of rates was invalid and void as to the plaintiff herein.

5. That the record shows that the assured held a certificate of insurance under date of 1885 and that he continued to pay the assessments and dues thereon until January 1, 1911; that he was then notified that an increase of rates had been enacted and that thereafter said increase of rates would be effective; that he refused to pay said increase and continued to tender his former rate to the Section Secretary whose duty it was to receive the assessment from the members of assured's lodge; that he continued to tender said old rate up to the time of his death; that the defendant refused to receive the said amount or any part thereof so tendered, but demanded the increased amount, which the assured refused to pay and denied the authority of the defendant to make an increase of the rates effective as against him.

It was further shown that in March, 1911, Joseph Holt and many others, in their own behalf and on behalf of all

others similarly situated brought a suit in the U. S. District Court for the District of Indiana, alleging that the legislation increasing the rates upon the members of the fourth class of which they were members and also the insured herein was invalid and void and that such legislation was a violation of their rights and prayed that said legislation be declared void and that the officers of the Insurance Department of the defendant be enjoined and restrained from enforcing any part of said legislation; that an answer was filed thereto and also a cross-complaint filed; that the issues so made in said cause involved the validity of all the legislation of the defendant affecting or increasing the rates of insurance upon any and all members of said Fourth Class.

Said record further shows that said cause was referred to a Master in Chancery to hear the evidence and to report the facts together with his conclusions thereon; that said Master did hear all the evidence on behalf of the plaintiffs and of the defendant, and that he made a report to the District Court of his finding of facts and his conclusions thereon; that among said facts so found were that the defendant was created by virtue of a Federal Statute; that its Supreme Lodge and law making body at the time of enacting said rates was the same and created the same as when said Federal Statute was enacted creating said defendant; that it had at that time and at all times theretofore mentioned a representative form of government; that it was properly acting within the powers given to it by virtue of said act of Congress being Act of June 29, 1894, 28 U. S. Statutes at large 96-97.

Said record further shows that said Master expressly found that said increase of rates was obligatory and binding upon all members of said Fourth Class, and that the rates

established in said legislation were reasonable, proper and necessary for the life of said Department, and for the maturing of the certificates outstanding as well as those to be issued. Said Master reported his conclusions thereon in favor of the defendant.

The record further shows that the court after hearing the arguments thereon and after considering the evidence and said findings held that the Master's findings were proper and that his conclusions were correct, and that he thereupon entered a decree and judgment in favor of the defendant and against the plaintiffs.

The record further shows that exceptions were filed to the Master's findings of facts and to his conclusions and that said District Court overruled said exceptions and that the plaintiffs appealed from said judgment and decree to the Circuit Court of Appeals for the Seventh Circuit and that said appeal was heard by said court and that the judgment of the District Court of the United States for the District of Indiana was affirmed on July 18, 1916, 149 C. C. A. 197, 235 Federal 883.

The record further shows that an appeal was taken from said judgment of the Circuit Court of Appeals for the Seventh Circuit, to the Supreme Court of the United States and that said appeal was dismissed October 21, 1918, 248 U. S. 588, 63 L. ed. 434.

The record further shows that the rates in force prior to January 1, 1911, were insufficient for the purpose and could not mature the policies outstanding; that the Insurance Department was in very embarrassing circumstances; that the disbursements were exceeding the income and that within a very few months the small surplus would have been exhausted; that the rates had theretofore been increased sev-

eral times and that many extra monthly assessments had been made; that the membership was becoming restless that the Supreme Lodge had gravely considered the matter of increase for sometime and that they had called an expert actuary who had examined their certificates and had advised them that the only way to prevent the destruction of the Insurance Department was to increase the rates; that they used as the basis of said increase the American Experience Table of Mortality and an interest assumption of 3½%; that the rates established were based upon the attained ages of the members without medical examination; that all were treated exactly alike.

Said record further shows that the application of the assured, as well as the certificate in suit contained a provision that the assured will abide by the laws in force and by all laws subsequently enacted.

6. The court found in favor of the plaintiff for the amount of the certificate sued upon, together with attorney's fees and costs. From this judgment the defendant, your petitioner herein, appealed to the Supreme Court of the State of Nebraska, which affirmed the judgment of the District Court in favor of the respondent.

7. That the questions of law for the determination by the District Court were as follows:

(a) Was the assured, and his beneficiary, required by the laws, to observe and obey the Supreme Statutes of the defendant increasing the rates of insurance on the Fourth Class, of which he was a member?

(b) Did the Supreme Lodge of the defendant have the power, authority, and right under the Federal Statute of

June 29, 1894, 28 Statutes at large, pp. 96-97, to enact and promulgate the Supreme Statutes regulating and increasing the rates of insurance on the members of the Fourth Class?

(c) Was the Class suit by Joseph Holt and others against the defendant in this case, the petitioner herein, binding upon the assured herein?

(d) Did the District Court and later the Supreme Court give full faith and credit to said decision in their decision of the present case, as required by Article 4, Section 1, of the Federal Constitution?

(e) Did the District Court, and later the Supreme Court of the State of Nebraska give to the defendant therein, your petitioner, its right, as guaranteed by Section 905, Revised Statutes of the United States, giving effect to the judgment of the United States Court for the District of Indiana in the State of Nebraska the same as said judgment has in and for the said District of Indiana.

(f) Is the judgment of the United States District Court of Indiana *res judicata* of the question of representative form of government, validity of rates and duty of members of the Fourth Class in respect to the increase of rates.

(g) Does any member of said Fourth Class have the right again to contest the validity of the increase of rates in view of the decision of the United States District Court for the District of Indiana in said class suit of *Holt et al. v. Supreme Lodge Knights of Pythias* and in view of the decision of the United States Circuit Court of Appeals for the Seventh Circuit affirming said judgment, and of the dismissal of the appeal therefrom by the United States Supreme Court.

8. That the facts before stated under paragraph 5 were uncontradicted. The District Court of Nebraska held that the said statutes increasing the rates were void as to the plaintiff, the respondent herein, that the governing body of the defendant was not properly constituted and that no legislation enacted by the said body was valid or binding upon any member of the Insurance Department thereof in said State of Nebraska. That the judgment of the District Court of the United States for the District of Indiana was not *res judicata* as to any questions involved in this suit. The Supreme Court of the State of Nebraska held that the plaintiff was entitled to recover on the ground that the defendant did not have a representative form of government and that all legislation enacted by said body was invalid and void, and therefore, could not be enforced against the plaintiff; that said increased rates being invalid, did not affect the assured's right to the payment of his old rates and, therefore, that his certificate did not become forfeited and was valid and enforceable. That his rights were not affected by the judgment of the United States Court either in the Holt case or in the Mims or Smyth cases, and that those adjudications did not affect the plaintiff's rights.

9. The Supreme Court of the State of Nebraska in affirming and confirming, on rehearing its judgment and decree affirming the judgment of the District Court of Otoe County, erred in striking down the Supreme Statutes of your petitioner, which statutes were enacted pursuant to and in accordance with its powers granted under the Federal Act of June 29, 1894, 28 Statutes at large, pp. 96-97, for the reason that such Supreme Statutes have already been adjudicated and declared valid by your Honorable Court in

the cases of *Supreme Lodge Knights of Pythias v. Mims*, 241 U. S. 574, 60 L. ed. 1179. And the case of *Supreme Lodge Knights of Pythias v. Smyth*, 245 U. S. 594, 62 L. ed. 492, and the decision in the case of *Holt v. Supreme Lodge Knights of Pythias*, 149 C. C. A. 197, 235 Fed. 885.

10. That the Supreme Court of the State of Nebraska erred in refusing to extend full faith and credit, as required by Article 4, Section 1, of the Federal Constitution to the judgment and decree of the United States District Court for the District of Indiana in the Class suit of *Joseph Holt et al. v. The Supreme Lodge Knights of Pythias*, wherein suit was brought on behalf of the plaintiffs to have declared null and void the Supreme Statutes of your petitioner increasing the rates, being the same statutes involved in the present action, and wherein said District Court of the United States expressly held valid and obligatory all of said statutes.

11. That the Supreme Court of the State of Nebraska in affirming the judgment of the District Court of said State erred in failing to give effect, and full faith and credit as required by Article 4, Section 1, of the Federal Constitution of the powers, rights, and privileges to your petitioner herein as granted to it under and by virtue of the Federal Statute creating your petitioner, that is, the Act of June 29, 1894, 28 Statutes at large 96-97. The said statute having been judicially construed by the Honorable Supreme Court of the United States in the cases of *Supreme Lodge Knights of Pythias v. Mims*, 241 U. S. 574, 60 L. ed. 1179, and *Supreme Lodge Knights of Pythias v. Smyth*, 245 U. S. 594, 62 L. ed. 492.

12. That the Supreme Court of the State of Nebraska erred in refusing to give full faith and credit, as required by Section 905, R. S. U. S., to the judgment of the United States District Court for the District of Indiana, which expressly adjudicated the validity of the Supreme Statutes of your petitioner increasing its rates of insurance being the same statutes involved in the present action.

In the case of *Joseph Holt et al. v. Supreme Lodge Knights of Pythias*, which judgment and decree of said District Court was affirmed on appeal to the U. S. Circuit Court of Appeals of the Seventh Circuit (149 C. C. A. 197, 235 Fed. 885).

13. The Supreme Court of the State of Nebraska in affirming the judgment of the District Court of Otoe County, erred in refusing to hold that under its Federal charter, being the Federal Act of June 29, 1894, 28 Statues at large, pp. 96-97, the governing body of said charter had the power, right and authority to enact the legislation involved in said action, increasing the rates of insurance upon its members.

14. That the Supreme Court of the State of Nebraska erred in failing to give full faith and credit to the judgment and decree of the United States District Court for the District of Indiana in the case of *Joseph Holt v. Supreme Lodge Knights of Pythias*, the same being a class suit brought by and on behalf of the plaintiff therein and all other members of the Fourth Class of said Insurance Department, including the assured in this case, wherein it was adjudged that the the Supreme Lodge Knights of Pythias had and maintained a representative form of government at the time of the enactment of the Supreme Statutes involved in this case increasing the rates of insurance.

Your petitioner insists that its defense to said action should have been sustained and that the judgment of the District Court of the United States of the District of Indiana, should have been given the full faith and credit to which it was entitled under Article 4, Section 1, of the Federal Constitution and of Section 905, R. S. U. S. extending full faith and credit to the judicial acts and records of the courts of other states, and that your petitioner's rights under its charter were unlawfully denied to it. Your petitioner presents herewith as a part of this petition its brief showing more fully its views upon the questions involved and also a transcript of the record of the Supreme Court of the State of Nebraska which brief and record are made part of this petition.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this court, directed to the Supreme Court of the State of Nebraska, commanding said Court to certify and to send to this court, on a day certain to be therein designated, a full and complete transcript of the record and all proceedings of said Supreme Court in this case which was entitled in that court, *George O. Myer, Appellee, v. Supreme Lodge Knights of Pythias, Appellant*, to the end that said cause may be reversed by this court as provided by law, and that your petitioner may have such other and further relief or remedy in the premises as to this court may seem appropriate, and that said judgment of the Supreme Court of the State of Nebraska be reversed by this Honorable Court.

SUPREME LODGE KNIGHTS OF PYTHIAS,

By Harry Wade

President of Insurance Department.

State of Indiana, }
County of Marion, } ss.:

Harry Wade, being duly sworn, says that he is the president of the Insurance Department of the Supreme Lodge of Knights of Pythias, that he has read the aforesaid petition by him subscribed and that the facts therein stated are true to the best of his information and belief.

Harry Wade

Subscribed and sworn to before me this 30 day of January, 1923.

Harry C Nolan

Notary Public in and for said State of Indiana.

My commission expires Dec. 5, 1926.

W J Connell

Sol H Cleary

Attorneys for Petitioner.

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Supreme Court of the United States

OCTOBER TERM, 1922.

SUPREME LODGE KNIGHTS OF PYTHIAS, *Petitioner,*

vs.

GEORGE O. MEYER, *Respondent.*

No. ————.

PETITIONER'S BRIEF.

The petitioner herein was created by act of Congress on June 29, 1894, 28 U. S. Statutes at Large, pp. 96, 97, Chap. 119. Said statute is as follows:

> "An Act to incorporate the Supreme Lodge of the Knights of Pythias.
>
> Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled:
>
> That Geo. B. Shaw, of the City of Eau Claire, State of Wisconsin; William W. Blackwell, of the City of Henderson, State of Kentucky; Walter B. Richie, of the City of Lima, State of Ohio; Robert L. C. White, of the City of Nashville, State of Tennessee; Philip T. Colgrove, of the City of Hastings, State of Michigan, and Tracy R. Bangs, of the City of Grand Forks, State of North Dakota, officers and members of the Supreme Lodge Knights of Pythias, and their successors, be and they are hereby incorporated and

made a body politic and corporate in the District of Columbia, by the name of "The Supreme Lodge Knights of Pythias," and by that name it may sue and be sued, plead and be impleaded, in any court of law or equity, and may have and use a common seal, and change the same at pleasure, and be entitled to use and exercise all the powers, rights and privileges incidental to fraternal and benevolent corporations within the District of Columbia.

Sec. 2. That the said corporation shall have the power to take and hold real and personal estate, not exceeding in value one hundred thousand dollars, which shall not be divided among the members of the corporation, but shall descend to their successors for the promotion of the fraternal and benevolent purposes of said corporation.

Sec. 3. That all claims, accounts, debts, things in action or other matters of business of whatever nature now existing for or against the present Supreme Lodge Knights of Pythias, mentioned in section 1 of this act, shall survive and succeed to and against the body corporate and politic hereby created; provided, that nothing contained herein shall be construed to extend the operation of any law which provides for the extinguishing of claims or contract by limitations of time.

Section 4. That said corporation shall have a constitution and shall have power to amend the same at pleasure; provided, that such constitution or amendments thereof do not conflict with the laws of the United States or of any State.

Section 5. That Congress may at any time amend, in any business for gain; the purpose of said corporation being fraternal and benevolent.

Section 6. That Congress may at any time amend, alter or repeal this act.

Approved June 29, 1894."

1.

A corporation created by a federal statute is "inherently entitled to invoke" the federal jurisdiction.

Texas Pacific R. Co. v. Hill, 237 U. S. 208, 59 L. Ed. 918;

Texas Pacific R. Co. v. Marcus, 237 U. S. 215, 59 L. Ed. 924;

Supreme Lodge Knights of Pythias v. Mims, 241 U. S. 574, 60 L. Ed. 1179;

Supreme Lodge Knights of Pythias v. Smyth, 245 U. S. 594, 62 L. Ed. 492.

2.

The proper construction of a federal statute is primarily for the federal courts; and the charter rights and powers of petitioner under its federal charter are for the final determination of the federal courts.

Union Pacific R. Co. v. Myers, 115 U. S. 1, 29 L. Ed. 319;

Texas Pacific R. Co. v. Cody, 166 U. S. 606, 41 L. Ed. 1132;

Matter of Dunn, 212 U. S. 387, 53 L. Ed. 563.

3.

The charter of a corporation as construed by the courts of its domicile or creation is the measure of its rights everywhere, and where a class suit is brought in the courts of the jurisdiction of the corporation's domicile, the judgment defining the rights of said corporation are obligatory every-

where under the full faith and credit clause of the federal constitution.

Supreme Council Royal Arcanum v. Green, 237 U. S. 531, 59 L. Ed. 1089;

Hartford Life Ins. Co. v. Ibs, 237 U. S. 662, 59 L. Ed. 1165.

4.

Of necessity, the courts of the jurisdiction creating a corporation must constitute the final authority as to the validity of its rules, regulations, and by-laws.

Clark v. Mutual Reserve Fund Life Assn., 14 App. Cas. (D. C.) 154, 43 L. R. A. 390;

Condon v. Mutual Reserve Fund Life Assn., 89 Md. 93, 44 L. R. A. 149, 73 Am. St. 169;

State v. Shain, 245 Mo. 78, 149 S. W. 479.

Brenizer v. Supreme Council Royal Arcanum, 141 N. C. 409, 5 L. R. A. N. S. 235, 53 S. E. 835;

Royal Fraternal Union v. Lunday, 51 Tex. Civ. App. 637, 113 S. W. 185;

Taylor v. Mutual Reserve Fund Life Assn., 97 Va. 60, 46 L. R. A. 621.

5.

The case of *Holt, et al. v. Supreme Lodge Knights of Pythias*, was a class suit, having been brought and maintained by the complainants "in their own behalf and on behalf of all others similarly situated," in the United States District Court for the District of Indiana; and the judgment therein rendered, which was affirmed on appeal (See 149 C.

C. A. 197, 235 Fed. 885), is *res judicata* as to all matters therein alleged, one of which was that the Supreme Statutes of the order increasing rates was and is valid and obligatory, said judgment expressly holding said rates valid.

Supreme Tribe Ben Hur v. Cauble, 255 U. S. 356;
Supreme Council Royal Arcanum v. Green, 237 U. S. 531, 59 L. Ed. 1089;
Hartford Life Ins. Co. v. Ibs, 237 U. S. 662, 59 L. Ed. 1165.

6.

Although said judgment was specially pleaded in petitioner's answer and was introduced in evidence, the District Court of Otoe County failed and refused to give effect to said judgment, and the Supreme Court of the State of Nebraska in affirming said judgment failed and refused to give full faith and credit to said judgment as guaranteed by the Art. 4, Section 1, of the Federal Constitution and by Section 905, R. S. U. S.

Hartford Life Ins. Co. v. Ibs, 237 U. S. 662, 59 L. Ed. 1165;
Supreme Council Royal Arcanum v. Green, 237 U. S. 521, 59 L. Ed. 1089.

7.

Where the highest court of the jurisdiction creating the corporation being the United States Supreme Court in this case, has adjudicated the rights and powers possessed by a

corporation, it is the duty of other courts to follow such adjudication and to give effect to such powers.

Supreme Council Royal Arcanum v. Green, 237 U. S. 531, 59 L. Ed. 1089;

Hartford Life Ins. Co. v. Ibs, 237 U. S. 662, 59 L. Ed. 1165.

8.

Judgments of the Federal courts are entitled to full faith and credit in the state courts, the same as judgments of the state courts, under Art. 4, Sec. 1, of the federal constitution, and section 905, R. S. U. S.

Hancock Nat. Bank v. Farnum, 176 U. S. 645, 45 L. Ed. 622;

Union, etc., Bank v. Memphis, 189 U. S. 75, 47 L. Ed. 715;

Metcalf v. City of Watertown, 153 U. S. 671, 38 L. Ed. 861.

9.

A judgment must be given the same force and binding effect in another state which it has in the state rendering such judgment.

Hampton v. McConnell, 3 Wheat. 234, 4 L. Ed. 378;

Mills v. Durgee, 7 Cranch 481, 3 L. Ed. 411;

Fauntleroy v. Lum, 210 U. S. 236, 52 L. Ed. 1042.

The plaintiff's assured having been a party to the Holt case, brought to declare void and illegal, all the supreme statutes of the petitioner, increasing the rates of insurance,

cannot now, after such rates have been held valid and obligatory, in such case, raise the question of the validity of such rates, even though a different ground therefor be alleged, which there is not.

Holt County v. National Life Ins. Co., 25 C. C. A. 469, 80 Fed. 686;

Dimack v. Revere Copper Co., 117 U. S. 559, 29 L. Ed. 994;

Reynolds v. Mandel, 175 Ill. 615, 51 N. E. 649;

Bates v. Brodie, 245 U. S. 526, 62 L. Ed. 444;

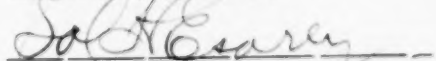
Mitchell v. First Nat. Bank of Chicago, 180 U. S. 471, 45 L. Ed. 627;

Union Pacific R. Co. v. Wyler, 158 U. S. 285, 39 L. Ed. 983;

Boston, etc., R. Co. v. Hurd, 47 C. C. A. 615, 108 Fed. 116, 56 L. R. A. 193.

In view of the foregoing provisions of our federal constitution, and statutes, and the uniform adjudications thereunder; and under our system of government and the application of our federal and state laws, your petitioner has not received its legal rights, and is entitled to a reversal of the judgment of said Supreme Court of Nebraska.

Respectfully submitted,



Attorneys for Petitioner.

No. 214.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1923.

SUPREME LODGE KNIGHTS OF PYTHIAS,
Plaintiff in Error,

v.

GEORGE O. MEYER,
Defendant in Error.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEBRASKA.

BRIEF OF PLAINTIFF IN ERROR.

T. P. LITTLEPAGE,
W. J. CONNELL,
GEORGE A. BANGS,
SOL H. ESAREY,
WARD H. WATSON,
Attorneys for Plaintiff in Error.

E. A. HARDIN PRINT, INDIANAPOLIS.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1923.

SUPREME LODGE KNIGHTS OF PYTHIAS, *Plaintiff in Error,* v. GEORGE O. MEYER, *Defendant in Error.*	No. 214.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEBRASKA.

BRIEF OF PLAINTIFF IN ERROR.

STATEMENT OF THE CASE.

This was an action by the beneficiary upon a benefit certificate issued by the plaintiff in error. As alleged in the complaint, said certificate provided, among other things, for the payment of insurance to the defendant in error upon the death of the member. Said certificate was issued subject to the charter, and the laws, rules and regulations of the society governing the Insurance Department, "now in

force, and as the same may be hereafter changed, altered, added to, amended or repealed." (Tr., p. 3, Par. 2.)

Another provision of said certificate required said member to pay the assessments, or dues, monthly, during the life of said certificate. (Tr., p. 4, Par. 1.)

And "failure to make any such payment on or before the 20th day of the month for which the same is due shall, ipso *facto*, from and after such date, forfeit this certificate." (Tr., p. 4, Par. 1.)

The application of said member for insurance, was made a part of the contract and is set out in plaintiff's complaint and one of the provisions thereof, is "I further understand and agree that if my said application for membership is accepted, constituting parts 1 and 2 thereof, that the said application, the benefit certificate or certificates that may be issued thereon, the charter, the constitution and statutes of said Supreme Lodge now in force with any and all amendments thereto hereafter enacted by the said Supreme Lodge, and all the rules and regulations of the Board of Control of said Insurance Department as the same now exists or may from time to time be adopted shall constitute the contract of insurance between the undersigned the said Supreme Lodge, and I further agree that as a member of said insurance department, if accepted I will be governed and conform to, and my obligations, and rights and those of my beneficiaries shall be governed and controlled by the said contracts." (Tr., p. 7, Par. 5.)

To this complaint the plaintiff in error filed its amended answer which among other things, alleged that the plaintiff in error was created by an Act of Congress and that its powers to transact business, execute contracts and

change or raise the rates of insurance was derived from such Act of Congress, and that the claim of said plaintiff required the court to give a construction to said act which construction constituted a federal question upon which the courts of the United States constituted the final authority. (Tr., p. 17, Par. 1.)

Said amended answer further alleged that said member "failed, neglected and refused to pay his assessments and dues required to be paid under said certificate, No. 4651, from January, 1911, on to the time of his death, and that by reason of such failure, neglect and refusal the said certificate of membership and all the rights of said Louis J. Meyer became and were forfeited and the said plaintiff, by reason of such failure, neglect and refusal has no right of recovery for any sum whatever in this action." (Tr., p. 18, Par. 4.)

The amended answer further alleged that pursuant to said Act of Congress creating the plaintiff in error, it promulgated and made an increase of rates of insurance, and the amount required to be paid by said member and all others, was increased; that said increased rates became effective January 1, 1911; that the said member had full knowledge of said increase; that said increase was just, reasonable and necessary and that the said plaintiff in error had the authority and power to enact and pass said increase in rates and that said laws so increasing the rates were binding upon said member and that notwithstanding the duty of said member to pay said increased rates, he purposely failed, neglected and refused to pay said dues from said date to the time of his death, and that a forfeiture of all his rights

by reason thereof occurred and existed and has ever since existed." (Tr., p. 18, Par. 5.)

The amended answer further alleged that one, Holt, and others, before the bringing of this action had brought and maintained a class suit in the District Court of the United States for the District of Indiana, against the plaintiff in error in order to determine the validity of the raise in rates which said members refused to pay and that the said United States Court finally decided and decreed that the plaintiff in error had the right, power and authority so to change and increase its said rates, and that its said action in that behalf was reasonable, proper and necessary; that said defendant had a representative form of government at the time it increased said rate of insurance; that the said Holt was a member of said organization in the same class with the said Louis J. Meyer and that said District Court had full power and jurisdiction of the matters involved in said suit. And that said decree "is final, conclusive and res judicata of the questions, matters and things therein decided and is decisive of the rights of said Louis J. Meyer and the rights of the plaintiff herein to recover in this action, and holding, adjudicating, determining and finally deciding that no right of recovery, under the facts of this case existed, and by reason of said decision and the determination of said questions by said court, the said plaintiff is now barred and estopped from again litigating said questions or denyng the conclusiveness of said decision in said case." (Tr., p. 19, Par. 6.)

The amended answer further alleges that the Supreme Court of the United States in an appeal taken by the plaintiff in error in a case of Mims against the plaintiff in error

affirmed by the Court of Civil Appeals of the state of Texas, had construed the statute creating the plaintiff in error herein and had decided in said case that the plaintiff in error had the right and the power to increase its rates under and by virtue of the same Supreme Statute which is involved in the present case, and that said decision so construing said statute is binding and obligatory upon the courts of the several states by reason of the fact that the act creating the plaintiff in error is a federal statute. (Tr., p. 20, Par. 7.)

The amended answer further alleges that said Louis J. Meyer in his application and in his certificate also agreed to abide by all the rules and regulations then enacted and all to be subsequently enacted governing said insurance, and that the subsequent statute raising the rates was proper and just to all members and that his beneficiary is now estopped from denying or controverting the right of the plaintiff in error to raise the rates of insurance in controversy herein. (Tr., p. 21, Par. 8.)

The amended answer further alleged that the plaintiff in error was first organized under the laws of the District of Columbia in 1870, for a period of twenty years; that its charter expired in 1890; that from 1890 to 1894 it continued transacting its customary business as a *de facto* corporation; that in 1894 a federal statute was enacted creating the plaintiff in error and that it has since continued to transact all of its business under and by virtue of said Act of Congress.

It further alleges that the Insurance Department was created in 1877 that it continued to write insurance from that time on; that the plaintiff's decedent was a member of

the Insurance Department and that Joseph Holt and all others who were named as plaintiffs in the case of Holt *et al*, against Supreme Lodge as above set forth were members of said class in said Insurance Department; that in 1910 the plaintiff in error "ascertained that the rates theretofore fixed were inadequate and would not produce funds sufficient to mature the certificates outstanding; that there was an increasing deficit due from each holder of a certificate because the dues were less than cost of insurance; that said Supreme Lodge was through necessity required to take action for the relief of said Department, that said Supreme Lodge did enact and promulgate a statute fixing a schedule of rates being the same rates now in force; that the enactment of said statute and the promulgation of said rates caused more or less dissatisfaction among the members of said Department of defendant and that, because thereof, Joseph Holt, Victor Mauberret, Ross Carlin and 17 others, all citizens and residents of the state of Louisiana "on behalf of themselves and all others similarly situated," on January 25, 1911, filed their bill in equity in the United States District Court for the District of Indiana, alleging that said statute was invalid, wrongful and not binding upon them or anyone holding a certificate similar to theirs, and prayed that the said court grant a writ of injunction restraining the defendant from putting into effect said statute increasing said rates and requiring the defendant to accept the old and prior rates; that the defendant duly answered said bill, denying said statutes was invalid but asserted that it was valid and necessary to the further conduct of said defendant." **(Tr., p. 21, Par. 9.)**

That said cause was submitted for trial and the court found that the defendant therein was a fraternal beneficiary society conducted without profit, possessing a lodge system and ritualistic form of work and had a representative form of government; that the increase of rates was duly and legally made. That the said Joseph Holt and all others were in the same class with the plaintiff's decedent and held certificates similar in all respects to the one held by plaintiff's decedent and sued upon in this case. (Tr., p. 22, Par. 9.)

It was further alleged that an appeal was taken from the decree and judgment of the United States District Court to the Circuit Court of Appeals for the Seventh Circuit and that said judgment was duly affirmed and that the plaintiffs therein duly filed their appeal from the judgment of affirmance of the Circuit Court of Appeals, and that said appeal was dismissed by the Supreme Court of the United States and that said judgment and decree of the District Court of the United States has been in full force and effect since its rendition.

The amended answer further alleges that the said judgment and decree of the district court of the United States and of the Circuit Court of Appeals in said cause are entitled to full faith and credit in the courts of the State of Nebraska and that said judgment and decree ought to estop the plaintiff from alleging or asserting that the statute of 1910 raising the rates is invalid or unenforceable against the plaintiff, and that said plaintiff is estopped by reason thereof from alleging or asserting that the defendant does not have and maintain a representative form of government

and that the said judgments should be and are binding and conclusive on all courts, state as well as federal and that a failure so to consider and determine constitutes a failure to give full faith and credit to the records and judgments of said court, as required by Section 905 Revised Statutes of the United States, and also is in violation of Article 4, Section 1, of the Federal constitution requiring full faith and credit to be given to the public records and judicial proceedings of every other state.

The amended answer further alleged that in 1892, 1901, 1909 and 1910, extra assessments were made against the plaintiff's decedent and in 1894 and 1901 increases in rates were established and promulgated by the defendant and said increases were duly paid by plaintiff's decedent; that the manner of selecting the Supreme Lodge of the defendant has been prior to and was subsequently to said times the same as in the year 1910 when the increase in question was enacted; that by reason of said facts the plaintiff ought to be estopped from asserting that the defendant in 1910 did not have a representative form of government.

The plaintiff replied to said amended answer by alleging that no act of Congress was involved in this action; that the certificate of insurance was not conditional and was not subject to a change by said defendant and further denied that the said Louis Meyer failed or refused to pay his assessments after January 1, 1911, or at any other time, and that the defendant was not vested with power or authority to make any increase in the rates of insurance which would affect the certificate sued upon and further denied that any change of the rate of insurance was made affecting the certificate of plaintiff's decedent. (Tr., p. 25.)

Said reply further alleged that on a prior appeal of this cause the Supreme Court of Nebraska had held that the plaintiff in error did not have a representative form of government, and that it was without any power to change its rates by reason of said fact, and that the pretended rates sought to be made effective January 1, 1911, were void, and therefore, said certificate did not become forfeited but remained in force and effect.

JUDGMENT.

The finding was for the plaintiff. (Tr., pp. 26-27.) A motion for a new trial was duly filed. (Tr., pp. 28-29.) Said motion alleged that the finding of the court was not sustained by sufficient evidence and that it was contrary to law.

Also that the court erred in refusing to give credit to the judgment and proceedings in the Holt case. That the Court erred in holding that said decisions of federal courts were not final and conclusive as to the validity of the statutes raising the rates; that the court erred in holding that its failure to give full faith and credit to the judgment in the Holt Case was in violation of Article 4, Section 1, of the Federal Constitution; that the court erred in failing to give effect to said judgment and in holding that the failure to give effect to said judgment did not constitute a violation of Section 905 Revised Statutes of the United States; that the Court erred in refusing to sustain the increase of rates and in so doing denied the authority of the defendant under the Act of Congress creating the defendant, and that the Court erred in holding that the judgment and decree of

the Federal Court was not binding upon the courts of the State of Nebraska. (Tr., pp. 28-29.)

Said motion was overruled and an exception reserved.

EVIDENCE.

The evidence consisted mostly of stipulations. Two witnesses testified: Mr. W. O. Powers, General Secretary, and George A. Bangs, a member of the Board of Control.

It was stipulated by the parties that the Supreme Lodge Knights of Pythias is a fraternal order maintaining an Insurance department, having the principal place of business at Indianapolis, Indiana, and authorized to transact business in Nebraska during the period covered by the pleadings in the case; that on June 11, 1885, Louis J. Meyer was a member of the subordinate lodge of the defendant and was the holder of a certificate of insurance as heretofore described in plaintiff's complaint, on June 27, 1910, he petitioned for and secured a change of beneficiary in said certificate. Said certificate is set out in transcript on pp. 37-43 and contains the provisions heretofore set out in the abstract of plaintiff's complaint.

It was further stipulated that said insurance was duly paid up to January 1, 1911. (Tr., p. 33, ll. 4-10.)

It was further stipulated that the said decedent from and after January 1, 1911, up to the time of his death tendered to the defendant, Section Secretary all dues, assessments and charges at the same rate he was paying during 1910, and that said tenders were refused by the defendant. (Tr., p. 33, Par. 1.)

The reason for the refusal to accept the said tendered dues and assessments was that the amounts so tendered were insufficient under the increased rates which became effective January 1, 1911, and the defendant forfeited said insurance on the books of the society, and said forfeiture remained so until said member's death. (Tr., p. 34.)

It was further stipulated that Louis J. Meyer died April 11, 1916, and that notice of his said death was duly given to the defendant but liability was denied. (Tr., p. 34.)

It was further stipulated that in 1885 the Supreme Lodge Knights of Pythias was a corporation organized and doing business under the laws of the United States for the District of Columbia; that it was organized August 5, 1870, and continued as such until 1890; that it continued its business as a de facto corporation until 1894; that on June 29, 1894, the Supreme Lodge Knights of Pythias was created by a special statute of the United States under which it has existed and operated ever since.

Said act appears in 28 U. S. Statutes at Large, 96-97, which act is as follows:

> "An Act to Incorporate the Supreme Lodge of the Knights of Pythias. Be it enacted by the Senate and House of Representatives of the United States of America, in Congress Assembled:
>
> That George B. Shaw, of the City of Eau Claire, State of Wisconsin; William W. Blackwell, of the City of Henderson, State of Kentucky; Walter B. Richie, of the City of Lima, State of Ohio; Robert L. S. White, of the City of Nashville, State of Tennessee; Philip T. Colgrove, of the City of Hastings, State of Michigan, and Tracy P. Bangs, of the City of Grand Forks, State of North Dakota, officers and

members of the Supreme Lodge Knights of Pythias, and their successors, be and they are hereby incorporated and made a body politic and corporate in the District of Columbia, by the name of 'The Supreme Lodge Knights of Pythias,' and by that name it may sue and be sued, plead and be impleaded, in any court of law or equity, and may have and use a common seal, and change the same at pleasure, and be entitled to use and exercise all the powers, rights and privileges incidental to fraternal and benevolent corporations within the District of Columbia.

Section 2. That the said corporation shall have the power to take and hold real and personal estate, not exceeding in value one hundred thousand dollars, which shall not be divided among the members of the corporation, but shall descend to their successors for the promotion of the fraternal and benevolent purposes of said corporation.

Section 3. That all claims, accounts, debts, things in action or other matters of business of whatever nature now existing for or against the present Supreme Lodge Knights of Pythias mentioned in section 1 of this act, shall survive and succeed to and against the body corporate and politic hereby created; provided that nothing contained herein shall be construed to extend the operation of any law which provides for the extinguishing of claims or contract by limitations of time.

Section 4. That said corporation shall have a constitution and shall have power to amend the same at pleasure; provided that such constitution or amendments thereof do not conflict with the laws of the United States or of any State.

Section 5. That said corporation shall not engage in any business for gain; the purposes of said corporation being fraternal and benevolent.

Section 6. That Congress may at any time amend, alter or repeal this act.

Approved June 29, 1894."

(28 U. S. Statutes at Large, 96 and 97.)

It was further stipulated that the Supreme Statutes of 1906, 1908, 1910, 1912, 1914 and 1916 be admitted in evidence with the agreement that either party could select such portions thereof as were deemed important in the hearing of the case. (Tr., p. 34.)

It was further stipulated that the Supreme Lodge of 1910 was composed of 163 members; that nine thereof were Past Supreme Chancellors and eight, Supreme officers of the deefndant, that ninety-eight were holders of certificates in the Insurance Department and of said total 146 were delegates elected by the various grand lodges; that all of said members participated in the enactment of the statutes increasing the rates which became effective January 1, 1911; that the Supreme Lodge during the period covered by the pleadings in this case was constituted in accordance with the Supreme constitution as it existed in 1910 and that all legislation and statutes were enacted in substantially the same manner; that except the laws and statutes enacted in 1910 there is no question or issue as to the validity of laws contained in the Supreme Constituton. (Tr., p. 35, Par. 1.)

It was further stipulated that the legislation of 1910, increasing the rates, constituted a grievance to many members of the Insurance Department; that Joseph Holt and nineteen others, members of the Insurance Department and holders of certificates in class 4 thereof, similar to the certificate held by plaintiff's decedent,

> "on behalf of themselves and all other persons similarly situated"

filed suit in the District Court of the United States for the District of Indiana against this defendant, for the purpose

of declaring invalid said statutes increasing the rates; that after a trial judgment was rendered in favor of the defendant; that an appeal was taken from said judgment to the Circuit Court of Appeals for the Seventh Circuit, which court affirmed the judgment of the District Court; 235 Fed. 885 (Tr., p. 35, Par. 2).

That the complainants appealed from said judgment of the Circuit Court of Appeals to the Supreme Court of the United States and that the complainants dismissed said appeal October 21, 1918. (248 U. S. 588.)

THE HOLT CASE.

The judgment in the Holt case pleaded as res judicata in this case as to the validity of the Supreme Statutes of the order increasing the rates, was a suit filed in the District Court of the United States for the District of Indiana. The substantial allegations of the complaint (Tr., pp. 53-72) so far as is deemed material here to the defense, alleged that the Supreme Lodge Knights of Pythias is a fraternal association maintaining an Insurance Department; that it is composed of various grand and subordinate lodges and that the complainants are members of the subordinate lodges of the defendant; that the members of the Insurance Department were divided into classes and the complainants were members of Class 4 thereof. That they bring their bill of complaint "on behalf of themselves and all other persons similarly situated; that they are in good standing in their local lodge and have paid their dues and assessments in accordance wth the laws of the order. That the assessments were payable monthly in advance. That they

duly tendered the dues and assessments for the month of January, 1911, and that said tenders were refused in accordance with said statutes increasing the rates and that the defendant refused to accept the amounts so tendered being the old rates." (Tr., pp. 53-58.)

They further allege that said increased rates were in violation of their certificates and impaired the obligation of their contracts with the defendant and destructive of their rights and of the obligations of the defendant.

It was further alleged that said increase of rates would deprive the complainants of all their rights in and to participation of the trust fund already paid in and held by said defendant.

It was further alleged that members of said Fourth Class were about to institute suits in various parts of the United States against the defendant on account of the alleged unlawful increase of rates, which would entail large expense against the trust funds for the defense of said suits. And that the defendant would be seriously interfered with by reason of the multiplicity of actions about to be brought and that it would be to the advantage of the defendant and all members of the Fourth class for this court to assume jurisdiction of said controversy.

To this bill of complaint the defendant filed its amended answer. (Tr., pp. 96-120.)

Said amended answer alleged that the defendant is a fraternal beneficiary society created by act of Congress that it has established throughout the United States Grand Lodges in the several states and territories and also subordinate lodges responsible to said grand lodges, all of which are controlled and governed by the Supreme Lodge.

That the rates existing prior to January 1, 1911, were grossly inadequate for the protection of the certificate holders and that the receipts were less than the amount necessary to meet the current losses, and wholly insufficient to meet the necessities of the Insurance Department.

That in 1901, the Supreme Lodge enacted a statute raising the rates to be paid by the members of the Fourth Class; that said rates so established in 1901 were inadequate and insufficient and that subsequent to 1907 the mortuary fund was constantly and rapidly diminished and that the rates in force failed to produce a sufficient sum to meet the necessities of said Insurance Department. That all certificates issued by said Department contained the provision that "In consideration of the payment hereafter to said endowment rank (now Insurance Department) of all assessments as required and the full compliance with all laws governing this rank now in force, or that hereafter may be enacted," said Supreme Lodge will pay to the beneficiary the face of the certificate. (Tr., p. 100.)

Said amended answer further alleged that each of said complainants failed and refused to pay the increased rates established by the Supreme Lodge at its session in 1910 and that by reason thereof each of said members became forfeited and ceased to have any interest or claim as members of said Insurance Department. (Tr., p. 103.)

Said amended answer further alleged that said statute increasing the rates did not violate any law of the defendant nor any contract existing between it and the complainant or any duty to the complainants or any of them but avers that it adopted the only course possible for the pre-

tection of their rights, and that without such increase the mortuary fund would have become wholly insolvent and permanently wrecked. (Tr., pp. 105-106.)

The defendant herein in its cross bill in said Holt case alleged that theretofore in the District Court of the United States for the District of Indiana, Fritz Heimsoth and others on behalf of themselves and all others similarly situated had brought a suit in which was drawn in question the validity of the Supreme statute increasing the rates which suit had been prosecuted to final judgment, which judgment was in favor of the validity of said Supreme Statute. (Tr., pp. 125-204.)

The record of said Holt case further shows a reference to the Master in Chancery and the filing of the Master's report. (Tr., pp. 207-208.)

Finding No. 3 of said report is in part as follows:

> "That said original corporation was during its entire existence and said defendant is and has been since its incorporation a fraternal beneficiary society, that neither the defendant nor its said predecessor was organized or was ever conducted for profit; that each of said corporations during the entire period of their existence possessed a lodge system and a ritualistic form of work and had a representative form of government." (Tr., p. 210, Finding 3.)

Finding 27 of said Master's report is as follows:

> "That the legislation of the defendant with reference to the creation of the Fifth Class, the transfer of members from the Fourth to the Fifth class, *the rerating of the Fourth Class, which became effective January* 1, 1911, and the use of the expense fund of the Insurance Department for the joint ex-

penses of the Fourth and Fifth Classes was all duly and legally adopted by the said defendant in pursuance to the constitution and laws of said defendant and in accordance with the mode therein prescribed for the adoption of amendments and the enactment of new legislation." (Tr., p. 243, Finding 27.)

Said record further shows the conclusion of law by said Mastery in Chancery, as follows:

"The equities of this suit are not with the complainants and the bill of complaint should be dismissed at the complainant's costs.

Accordingly a decree dismissing the bill of complaint at complainant's costs is recommended.

Respectfully submitted,

EDWARD DANIELS,
Master in Chancery."

May 24, 1913.

(P. 244, Par. 1.)

Said record further shows the complainant's exceptions to said Master's report (Tr., pp. 244-245).

Said Fourth exception to said Master's report is as follows:

"to the 27th finding of fact, in this, that the Master erroneously found therein that the legislation of the defendant with reference to the creation of the fifth class, the transfer of members from the fourth to the fifth class, *the rerating of the fourth class, which became effective January* 1, 1911, and the use of the expense fund of the Insurance Department for the joint expense of the Fourth and Fifth Classes was all duly and legally adopted by the defendant in pursuance to the constitution and laws of the defendant, and in accordance with the mode therein prescribed for the adoption of amendments and the

enactment of new legislation; whereas the evidence in said cause and the findings of fact contained in said Master's report show that said legislation was adopted in contravention of defendant's constitution of 1884 and 1886, and in violation of its representation, express declarations of trust and contracts with its fourth class members."

(Tr., p. 246, Par. 1.)

Said record further shows a stipulation entered into between the parties in the said Holt case, the fourteenth of which is in part as follows:

"That the suit instituted by these complainants against the defendant Supreme Lodge Knights of Pythias involved additional questions of law and fact different from those involved in the action instituted by the said Fritz Heimsoth, in that in this cause of action the complainants contest the right of the defendant to rerate the members of said Fourth Class of the Insurance Department according to a system adopted by said Supreme Lodge Knights of Pythias which issues of law and fact relating to the right of the defendant to rerate the members of the Fourth Class were in no wise involved in the action instituted by Fritz Heimsoth against said Supreme Lodge."

(Tr., p. 249, Stipulation 14.)

Said record further shows judgment in said Holt case as follows:

"Come now the parties by their respective solicitors and thereupon the defendant having heard the argument of counsel upon the exceptions to the Master's report herein, and duly considered the same and being sufficiently advised in the premises over-

rules said exceptions and approves and confirms said report.

It is thereupon ordered, adjudged and decreed by the court that the bill of complaint herein be and the same is hereby dismissed for want of equity, and it is further ordered, adjudged and decreed that the complainants do pay to said defendant its costs herein expended, taxed at $————."

(Tr., p. 250, Par. 3.)

Said record further shows an appeal from said decision, and also the decision of the Circuit Court of Appeals for the Seventh Circuit affirming said judgment of the District Court. (Tr., p. 251-254.)

The following sections of the Supreme Constitution among others were introduced in evidence:

"PREAMBLE.

The Supreme Lodge Knights of Pythias, a corporation existing by virtue of the act of Congress approved June 29, 1894, is the source of all authority in the order of Knights of Pythias and does hereby ordain and establish this Supreme Constitution."

"RESERVE POWERS.

The Supreme Lodge Knights of Pythias hereby reserves to itself all powers which are not herein delegated."

"ARTICLE TWO.

The Supreme constitution and the laws and rituals enacted by the Supreme Lodge in accordance therewith shall be the supreme law of the order of Knights of Pythias.

Section 482. To the end that every certificate in the Fourth Class of the Insurance Department shall on maturity be paid in full according to the tenor

thereof the Supreme Lodge enacts and declares that: * * *

(b) Every member of the Fourth Class of the Insurance Department at the time when this statute takes effect and who continues his membership until Dec. 31, 1910, shall pay a monthly payment for each month thereafter beginning with the month of January A. D. 1911, monthly payments in accordance with his attained age and occupation and the amount of a benefit provided for in his certificate, on January 1, A. D. 1911, as fixed by the table herein, unless and until otherwise provided by enactments of the Supreme Lodge." * * * (Tr., p. 284, Section 482.)

"Sec. 495. The right to change, increase, or adjust the schedule of rates in the Fourth and Fifth Classes, respectively, or any of them, is expressly reserved to the Supreme Lodge, as is also the right to apply any such changes increased or adjusted schedule of rates to all the members' certificates. This right of readjustment includes the right to advance members without reference to the plan or class of which they are members to their attained age at any time, and apply new rates applicable thereto when deemed necessary by the Supreme Lodge to carry out the purposes of the Insurance Department. (Tr., p. 290, Section 495.)

"Section 519. The regular monthly payments and assessments of all members of the Insurance Department shall be due and payable to their respective Section Secretaries without notice in advance, on the first day of each and every month, and the failure to make such payment on or before the exact day of each month shall cause from and after such date a forfeiture of the certificate of membership and all right, title and interest such member or his beneficiaries may have in and to the same and membership shall thereby cease ipso facto * * *. In case of forfeiture under the above section, membership may be regained only in the manner provided by law. (Tr., p. 291, Section 519.)

TESTIMONY.

The defendant, to sustain the issues on its part, introduced the witness, WALTER O. POWERS, who testified as follows:

Have been General Secretary of the Supreme Lodge Knights of Pythias, Insurance Department, since November, 1910. Had charge of the books and the General office of the Insurance Department. Was acquainted with the financial condition of the Department prior to 1910. The Fourth Class on October 31, 1910 had 11,392 members and the mortuary fund contained $675,800.85. The Fourth Class members were received between 1884 and 1910. The Fourth Class decreased from 1906 to 1910, the rates in force from September 1901 to January 1911 were 85% of the National Fraternal Congress Table. This was not sufficient to *mature* the certificates. The amount due from Mr. Meyer after January 1, 1911 was $26.30 per month. (Tr., p. 296.) Computing the payments made by Mr. Meyer from the time he became a member, with interest at 3½%, charging him with actual cost of insurance accumulated at the same rate, the mortuary contribution in comparison with actual cost of insurance furnished without considering any reserve or other factor and there was a deficit due from him on such basis of $1403.86. (Tr. p. 296-297.) This represents a deficit or protection secured by him at that much less than the actual cost. (Tr., p. 297.) There was a special assessment called July 15, 1892. The rates were increased 5c per month for each $1,000 of insurance March 1, 1894. A special assessment, in addition to the twelve was created in 1901. (Tr., p. 297.) The increase in 1894 was

made because the mortuary contributions were not sufficient to meet the maturing claims. (Tr., p. 298.) In the rerating of 1901 the payments were based upon the age of entry into the Insurance Department, and not upon the attained age, but in 1910 the rerating was based upon the American Experience Table of Mortality with an interest assumption of 3½% and at the attained age. (Tr., p. 298-299.) Under the statute of 1911, there is an annual valuation and accounting at the end of each year and if condition justify, the payment of one or more monthly dues will be waived. (Tr., p. 299.) The membership of the fourth class is about 1,000. The insurance about $1,800,000. The mortuary fund about $625,000. This will mature all certificates in that class. The rerating was done by Mr. S. H. Wolf, our consulting actuary of New York. (Tr., p. 300.) No new members were admitted to the Fourth Class after 1910. Mr. Meyer after September 1, 1901, paid $5.70 per month. From 1885 to 1894, $3.30 a month; from 1894 to 1901, $3.40 per month. These were the total payments. His certificate was $2,000. The deficit on Mr. Meyers' certificate was $1,403.86. (Tr., p. 301.) In 1910 an investigation showed a mortuary fund of about $1,189,000 where it should have been about $30,000,000. This led to the increase of rates in 1910. Provision was made for admitting members of the Fourth Class into the Fifth Class at their attained age but without medical examination. (Tr., p. 303.) There were about 55,000 members of the Fourth Class transferred to the Fifth Class. There was a great increase in lapsation of the Fourth Class members between 1906 and 1910. (Tr., p. 304.)

Mr. GEORGE A. BANGS testified as follows:

I am a member of the Board of Control and have been for the past 11 years. Also served from 1902 until 1904. From 1904 to 1906, was chairman of Special Committee created by Supreme Lodge at the 1904 Conference for purpose of investigating conditions of the Insurance Department. (Tr., p. 305.) I worked with the actuaries in making the investigation, assisted them in ascertaining the facts, met with the committee every three months and with the Board of Control during the two-year period. The Fourth Class at that time showed actual deficit of about thirty milllion dollars. That was the amount required to be on hand in cash and invested at 3½% in order to mature the certificates outstanding. There were several hundred thousand dollars death claims which had accumulated. (Tr., 306.) We were confronted with problem of rerating Fourth Class so that it would pay its obligations. There were but fifteen or twenty members in classes outside of the Fourth. We created the Fifth Class and began educating members of the Fourth Class to the desirability of permanent safe insurance. Probably three-fourths of the members voluntarily transferred to the new class. This began in 1907-1910. We were confronted with the necessity of rerating the Fourth Class to prevent insolvency. Adopted the American Experience Table of Mortality, the same as in the Fifth Class. (Tr., 307.) A slight difference was made in favor of older members in the expense loading. Since 1910 claims have been paid promptly as they matured. Have an annual accounting. If the earnings for the year are sufficient we waive one or more payments. (Tr., 308.) Our accounting in 1904 showed death losses about the same

as American Experience Table of Mortality and exceeded the National Fraternal Congress by a material percentage which was the basis of the 1901 rates. All of the mortuary funds on hand in 1906 were given to Class Four. (Tr., 309.) After the creation of Class Five there were many withdrawals from the Fourth Class. There was no increase in rates in the Fourth Class from 1906 up to 1910. It became necessary to levy special assessments in 1909-1910. Enacted the rerating statute for Class Four in 1910, becoming effective January 1, 1911. (Tr., 310.) The rates fixed for Class Four were not in any manner affected by the transfer of members to class Five. The rates were fixed upon the attained age of each member and have nothing to do with other people. There was no mortuary fund in comparison with the risk. In 1906 there was a thirty million dollar deficit. There was a list of outstanding obligations for $125,000,000 and assets of promises. The difference between them showed about $30,000,000. Rates are based upon expectancy of death. (Tr., 311.) The rates were fixed in order to meet outstanding policies and liabilities. Rates are fixed upon a mortality table. This table assumes from experience that at age 65 a certain number of men will die; at 66, a larger number will die; at 67 a still larger number will die. The rates were fixed so that it would mature all certificates except those withdrawn. There was no way to tell how many would withdraw. (Tr., 312.)

W. O. POWERS being recalled, testified:

The mortuary fund of the Fourth Class always remained to the credit of the members of that class. It was never changed to the Fifth Class. (Tr., 313.) There was never

any change made in rates for the Fifth Class after its creation. Members of the Fourth Class in transferring to the Fifth Class were not required to pass medical examination. They were given the option of eight or ten different forms of certificate. (Tr., 314.) The lapsation of a policy would not constitute a benefit to the society. The reason is that those who lapse are usually profitable and desirable risks—men in good health. The payments made by Mr. Meyer had already been used in payment of death losses. There was no reserve in the Fourth Class. (Tr., 315.) If all Fourth Class certificates had lapsed it would have ended that class, and the society would have the money. There has been practically no lapsation in Class Four since 1911.

ASSIGNMENTS OF ERRORS.

To the decision of the Supreme Court of the State of Nebraska the plaintiff in error has assigned errors as follows:

> "The Supreme Lodge Knights of Pythias in connection with its petition for a writ of error herein makes the following assignment of errors which said Supreme Lodge Knights of Pythias avers occurred in the final order and judgment herein, dated the 5th day of October, 1922, and in overruling petition for a rehearing November 20, 1922.
>
> First. The Supreme Court of the State of Nebraska erred in holding that the action of Supreme Lodge Knights of Pythias, as created by the act of the United States Congress, on June 29, 1894, 28 U. S. Statutes at Large, pp. 96, 97, in increasing the rates on its members in the insurance department, in 1910, effective January 1, 1911, was and is invalid and void, and not binding on the members thereof who were and are citizens of the State of Nebraska.

Second. The Supreme Court of the State of Nebraska erred in holding that no legislation of said Supreme Lodge Knights of Pythias, affecting those of its members holding insurance certificates, is valid and effective unless the membership of said Supreme Lodge shall be composed entirely of members holding insurance certificates, and shall also be biennially elective by the members holding such insurance certificates, whereas, the federal statute creating said corporation (28 U. S. Statutes at Large, pp. 96, 97) makes no such restriction, and specially creates the 'officers and members of the Supreme Lodge Knights of Pythias, and their successors,' as a body corporate, giving certain enumerated powers thereto, one of which is to issue insurance certificates to those of its membership desiring same.

Third. The Supreme Court of the State of Nebraska erred in holding that the power to strike down the statutes enacted by said Supreme Lodge Knights of Pythias, inhered in the States, after the validity of said questioned statutes had been finally decided and held valid in two decisions of the Honorable, the Supreme Court of the United States.

Fourth. The Supreme Court of the State of Nebraska erred in refusing to give effect to the judgment and decree of the Honorable, the United States District Court for the District of Indiana, in the case of *Joseph Holt, et al. v. Supreme Lodge Knights of Pythias*, wherein several members of said order, who held insurance certificates therein, and who were similarly situate with the plaintiff herein in all respects and who brought said suit in ther own behalf and in behalf of all others similarly situated, for the express object and purpose of having said statutes increasing the rates, which are the same statutes involved in this action set aside and held invalid and void, and to enjoin said Supreme Lodge Knights of Pythias from enforcing same, and which judgment and decree was appealed from, and affirmed by the Honorable Circuit Court of Appeals for the Seventh Circuit and by said Circuit Court of

Appeals for the Seventh Circuit affirmed, which judgments and decrees are now in full force and effect.

Fifth. The Supreme Court of the State of Nebraska erred in holding that the plaintiff in this action was not bound by the judgment and decree of the District Court of the United States for the District of Indiana in the case of *Joseph Holt, et al. v. Supreme Lodge Knights of Pythias,* which suit was brought and maintained by said Joseph Holt and others, on behalf of themselves and of all others similarly situate, and wherein the validity of the supreme statutes of said Supreme Lodge Knights of Pythias, was affirmed and set at rest, the plaintiff herein, being similarly situate with the plaintiffs in said Holt case, * * * and the same being a right guaranteed to the plaintiff in error under and by virtue of Article 4, Section 1, of the Federal Constitution, guaranteeing full faith and credit by one state to the judicial proceedings of every other state.

Sixth. The Supreme Court of the State of Nebraska erred in holding that the plaintiff in this action was not bound by the judgment and decree of the District Court of the United States for the District of Indiana in the case of *Joseph Holt et al. v. Supreme Lodge Knights of Pythias,* which suit was brought and maintained by said Joseph Holt and others, on behalf of themselves and of all others similarly situate, and wherein the validity of the supreme statutes of said Supreme Lodge Knights of Pythias, was affirmed and set at rest, the plaintiff herein, being similarly situate with the plaintiffs in said Holt case, and the same being a right guaranteed to the plaintiff in error by virtue of Section 905 R. S. U. S., Section 1519, U. S. Comp. Stat. 1916, providing that the records and judicial proceedings of any state or territory, or of any such country, shall have such faith and credit given to them in every court within the United States as they may have by

law or usage in the courts of the State from which they are taken.

Seventh. The Supreme Court of the State of Nebraska erred in holding that the plaintiff, being the defendant in error herein, is not estopped by virtue of his membership in said Supreme Lodge Knights of Pythias so created by federal statute, 28 U. S. Statutes at Large, pp. 96, 97, from again raising the question of the validity of the rates enacted by said Supreme Lodge Knights of Pythias in 1910, for the reason that Joseph Holt and others in their own behalf, and in behalf of all others similarly situate, including the defendant in errors assured, brought and maintained a suit for the purpose of declaring void the same statutes involved in this action, and wherein a judgment and a decree of the United States District Court for the District of Indiana was rendered that said statutes were valid and obligatory.

Eighth. The Supreme Court of the State of Nebraska erred in holding that the Supreme Lodge Knights of Pythias did not have and maintain, at the time of the enactment of the statutes in question, increasing the rates, a representative form of government, whereas it had and maintained at said time and ever, the same form of government which it had at its creation by federal statute, 28 U. S. Statute at Large, pp. 96, 97.

Ninth. The Supreme Court of the State of Nebraska erred in holding that the Supreme Lodge Knights of Pythias did not have and maintain at the time of the enactment of the statutes in question, increasing the rates, a representative form of government, whereas it was alleged in the answer and shown by the evidence that said question was expressly decided adversely by the judgment and decree of the United States District Court for the District of Indiana, in the case of Joseph Holt and others against Supreme Lodge Knights of Pythias, wherein Joseph Holt and others sued in their own behalf and in behalf of all others similarly situate,

including defendant in error's assured, to set aside said statutes increasing the rates, as invalid and void.

The Supreme Court of the State of Nebraska which is the highest court in said State in which a decision in this action could be had where was drawn in question the rights of the plaintiff in error under the federal act of 1894, 28 U. S. Statutes at Large, pp. 96, 97, creating the plaintiff in error, and the rights of plaintiff in error under Section 905 R. S. U. S., and under Article 4, section 1, of the federal constitution, and the question of estoppel of the defendant in error under the federal statute of 1894, 28 U. S. Statutes at Large, pp. 96, 97, and the question of the validity of the legislation of said plaintiff in error under the federal statute creating it, as affecting the members in the State of Nebraska.

The Supreme Lodge Knights of Pythias prays that a writ of error from the Supreme Court of the United States may issue to the Supreme Court of the State of Nebraska; and further prays that the Supreme Court of the United States will reverse the said final order and judgment of the Supreme Court of the State of Nebraska, and that the Supreme Lodge Knights of Pythias may be restored to all things and rights which it has lost by reason of the said final order and judgment; and that it may have such other and further relief as may be proper and just."

POINTS AND AUTHORITIES.

First Assignment of Errors.

The first error complained of is as follows: (Tr., p. 332.)

> "The Supreme Court of the State of Nebraska erred in holding that the action of the Supreme Lodge Knights of Pythias, as created by the act of the United States Congress on June 29, 1894, (28 U. S. Statutes At Large, pp. 96, 97) in increasing the rates on its members in the Insurance Department, in 1910, effective January 1, 1911, was and is invalid and void, and not binding upon the members thereof who were and are citizens of the state of Nebraska."

Point One.

1. The By-Laws of a Mutual Association are said to be a law unto the members.

Grosvenor v. United Society of Believers, 118 Mass. 78, 90;

Sovereign Camp Woodmen of the World v. Hall, 104 Ark. 538, 148 S. W. 526, 41 LRANS 517;

Supreme Lodge Knights of Pythias v. Knight, 117 Ind. 489;

Bauer v. Sampson Lodge Knights of Pythias, 102 Ind. 262;

Supreme Lodge Knights of Pythias v. Stein, 75 Miss. 107, 21 So. 559, 37 LRA 775;

Supreme Lodge Knights of Pythias v. LaMalta, 95 Tenn. 157, 30 LRA 838;

Daughtry v. Supreme Lodge Knights of Pythias, 48 La. Ann. 1203;

Supreme Lodge Knights of Pythias v. Kutscher, 179 Ill. 340, 53 N. E. 620;

Thibert v. Supreme Lodge Knights of Honor, 78 Minn. 448, 81 N. W. 220, 79 Am. St. 412, 47 LRA 136;

Kocher v. Supreme Council Catholic Benevolent Legion, 65 N. J. L. 649, 48 Atl. 544, 86 Am. St. 687, 52 LRA 861;

Benes v. Supreme Lodge Knights and Ladies of Honor, 231 Ill. 134, 83 N. E. 127;

Pfister v. Gerwig, 122 Ind. 567.

Point Two.

"The Federal Statute creating the Supreme Lodge Knights of Pythias provided that certain persons [naming them], officers and members of the Supreme Lodge Knights of Pythias, and their successors, be and they are hereby incorporated and made a body politic and corporate * * * entitled to use and exercise all the powers, rights and privileges incident to fraternal and benevolent corporations within the District of Columbia. * * * That said corporation shall have a constitution and shall have power to amend the same at pleasure."

Under this statute the successors of said named officers and others constituting the Supreme Lodge, elected and holding office in accordance with the constitution of said order, had the right to enact all legislation governing said order.

28 U. S. Statutes at Large, pp. 96, 97;

Supreme Lodge Knights of Pythias v. Knight, 117 Ind. 489, 20 N. E. 479, 3 LRA 409;

Dornes v. Supreme Lodge Knights of Pythias, 75 Miss. 466, 23 So. 191.

Point Three.

"It is a universal principle, that, where power or jurisdiction is delegated to any public officer or tribunal over a subject-matter, and its exercise is confided to his or their discreton, the acts so done are binding and valid as to the subject matter; and individual rights will not be disturbed collaterally, for anything done in the exercise of that discretion, within the authority and power conferred. The only questions which can arise between an individual claiming a right under the acts done, and the public, or any person denying its validity, are, power in the officer, and fraud in the party. All other questions are settled by the decision made or the act done by the tribunal or officer; whether executive (1 Cranch 170-1), legislative (4 Wheat. 423; 2 Pet. 412; 4 Ibid. 563), judicial (11 Mass. 227; 11 S. & R. 429 adopted in 2 Pet. 167-8), or special (20 Johns. 739-40; 2 Dow. P. C. 521, &c.), *unless an appeal is provided for, or other revision, by some appellate or supervisory tribunal, is prescribed by law.* The principles of these cases are too important not to be referred to, and though time does not admit of their extraction, and embodying in our opinion, we have no hesitation in declaring, that they meet with our entire concurrence, so far as applicable to this case."

United States v. Arredondo, 31 U. S. 691, 729, 8 L. ed. 547;

New Dunderberg Mining Co. v. Old, 79 Fed. 598, 25 CCA 116;

Bradley v. Dels Lbr. Co., 105 Wis. 245, 252, 81 N. W. 396;

Beard v. Federy, 70 U. S. 478;

And to the same effect see:

Connoyer v. Schaeffer, 89 U. S. 254;

Burgess v. Gray, 57 U. S. 48;

Lee v. Johnson, 116 U. S. 48;
Chouteau v. U. S., 34 U. S. 137;
Haydel v. Dufresne, 58 U. S. 23;
Noble v. Union River Logging R. Co., 147 U. S. 165, 172.

Point Four.

It is a well settled principle that the courts of a foreign state have no visitorial powers over a fraternal corporation, such power belonging exclusively to the state creating such corporation.

Eberhard v. Northwestern Mutual Life Ins. Co., 210 Fed. 520.

SECOND ASSIGNMENT OF ERRORS.

The second error complained of is as follows:

> The Supreme Court of the State of Nebraska erred in holding that no legislation of said Supreme Lodge Knights of Pythias affecting those of its members holding insurance certificates, is valid and effective unless the membership of said Supreme Lodge shall be composed entirely of members holding insurance certificates and shall always be biennally elective by the members holding such insurance certificates, whereas, the Federal Statute creating such corporation (28 U. S. Statutes at Large, pp. 96, 97), makes no such restriction and expressly creates the officers and members of the Supreme Lodge Knights of Pythias and their successors, "as a body corporate," giving certain enumerated powers thereto, one of which is to issue insurance certificates to those of its members desiring same."
>
> (Tr., p. 333, par. 2.)

Point Five.

The courts of one state will not undertake to supervise the rates of insurance fixed by a foreign corporation and will not enjoin the collection of such rate.

Clark v. Mutual Reserve Fund Life Association, 14 App. Cas. (D. C.) 154, 43 LRA 390;

Conden v. Mutual Reserve Fund Life Association, 89 Md. 99, 44 LRA 149, 73 Am. St. 169, 42 Atl. 944;

Pierce v. Equitable Life Assurance Society, 145 Mass. 56, 1 Am. St. 433, 12 N. E. 858;

Smith v. Mutual Life Ins. Co., 14 Allen 336;

Ebert v. Mutual Reserve Fund Life Association, 81 Minn. 116, 83 N. W. 506, 834, 84 N. W. 457;

People v. Brotherhood of Painters, Decorators and Paperhangers of America, 218 N. Y. 115, 112 N. E. 752;

Howard v. Mutual Reserve Fund Life Association, 125 N. C. 49, 45 LRA 853, 34 S. E. 199;

Royal Fraternal Union v. Lunday, 51 Tex. Civ. App. 637, 113 S. W. 185;

Taylor v. Mutual Reserve Fund Life Association, 97 Va. 60, 45 LRA 621, 33 S. E. 385;

Talbert v. Modern Woodmen of America, 83 Wash. 287, 145 Pac. 183.

Point Six.

The levying of assessments upon its members by a mutual insurance company or by a fraternal society is a matter relating to the internal affairs of such corporation and the

courts of another state have no jurisdiction to strike down such assessments.

Clark v. Mutual Reserve Fund Life Association, 14 App. Cas. (D. C.) 154, 43 LRA 390;

Condon v. Mutual Reserve Fund Life Association, 89 Md. 92, 93, 73 Am. St. 169, 44 LRA 149;

State v. Denton, 229 Mo. 187, 138 Am. St. 417, 129 S. W. 709.

Brenizer v. Supreme Council Royal Arcanum, 141 N. C. 409, 6 LRANS 235, 53 S. E. 835;

Howard v. Mutual Reserve Fund Life Association, 125 N. C. 49, 45 LRA 853, 34 S. E. 199;

Royal Fraternal Union v. Lunday, 51 Tex. Civ. App. 637, 113 S. W. 185;

Taylor v. Mutual Reserve Fund Life Association, 97 Va. 60, 45 LRA 621, 33 S. E. 385;

State v. Shain, 245 Mo. 78, 149 S. W. 479.

Point Seven.

Especially is this true where the courts of the domiciliary state have construed the by-laws and charter of such corporation and have declared such assessments valid.

Supreme Council Royal Arcanum v. Green, 237 U. S. 531, LRA 1916A 771, 59 L. ed. 1089;

(Reversing 206 N. Y. 591, 100 N. E. 411.)

Gaines v. Supreme Council Royal Arcanum, 140 Fed. 978;

(Injunction against increase of rates denied by Federal Court in Tennessee, defendant being a Massachusetts Corporation.)

Supreme Council Royal Arcanum v. Brashears, 39 Md. 624, 73 Am. St. 244, 43 Atl. 866;
Hartford Life Ins. Co. v. Ibs, 237 U. S. 662, 59 L. ed. 1165, LRA 1916A, 765.

Point Eight.

The Supreme Lodge Knights of Pythias now has and maintains a representative form of government. Its government is exactly the same as at the beginning. It has never been changed and the fact that others besides those holding certificates of insurance may be eligible not only to vote for, but to serve as supreme representatives to the Supreme Lodge does not deprive it of its representative form of government.

13 Harvard Law Review 67 (Historical Survey by Prof. Dicey);
Westerman v. Supreme Lodge Knights of Pythias, 196 Mo. 670, 94 S. W. 470, 5 LRANS 1114;
Tice v. Supreme Lodge Knights of Pythias, 204 Mo. 349, 100 S. W. 519;
Saunders v. Robinson, 144 Mass. 306, 10 N. E. 815.

THIRD ASSIGNMENT OF ERRORS.

The third assignment of errors is as follows:

"The Supreme Court of the State of Nebraska erred in holding that the power to strike down the statutes enacted by said Supreme Lodge Knights of Pythias inhered in said state of Nebraska, after the validity of said questioned statute had been finally decided, and held valid in two decisions of the Honorable, the Supreme Court of the United States.

Point Nine.

Where the highest court of the jurisdiction creating the corporation has declared its charter powers, such decision will be followed by the courts of other states in which such corporation may have members.

Supreme Council Royal Arcanum v. Green, 237 U. S. 531, 59 L. ed. 1089, LRA 1916A, 771;

Hartford Life Ins. Co. v. Ibs, 237 U. S. 662, 59 L. ed. 1165, LRA 1916A, 765;

Hartford Life Ins. Co. v. Barber, 245 U. S. 146, 62 L. ed. 208.

Point Ten.

The contract of membership in a fraternal beneficiary society is made with reference to, and includes the constitution and by-laws or Supreme Statutes of the order, of which every member is bound to take notice, whether especially referred to in the contract or not, and whether or not such constitution and by-law is known to the member.

Bauer v. Sampson Lodge Knights of Pythias, 102 Ind. 262, 267;

Supreme Lodge Knights of Pythias v. Knight, 117 Ind. 489, 3 LRA 409;

Supreme Lodge Knights of Pythias v. La Malta, 95 Tenn. 157, 30 LRA 838;

Mutual Assurance Society v. Korn, 7 Cranch 396, 3 L. ed. 383;

Fullenwider v. Supreme Council Royal League, 180 Ill. 621, 625;

Commonwealth v. Massachusetts Mutual Ins. Co., 112 Mass. 116;

Modern Woodmen of America v. Tevis, 117 Fed. 369;

Shipman v. Protected Home Circle, 174 N. Y. 398, 409.

Point Eleven.

The right of a fraternal beneficiary society to readjust and to increase its rates, where desirable, or necessary, is inherent in the very nature of such society.

Supreme Lodge Knights of Pythias v. Mims, 241 U. S. 574, 60 L. ed. 1179;

Supreme Lodge Knights of Pythias v. Smyth, 245 U. S. 594, 62 L. ed. 492;

Fullenwider v. Supreme Council Royal League, 180 Ill. 621, 54 N. E. 485, 72 Am. St. 239;

Note, 31 LRANS 416-417;

Wineland v. Knights of Maccabees, 148 Mich. 608;

Reynolds v. Supreme Council Royal Arcanum, 192 Mass. 150, 78 N. E. 129, 7 LRANS 1154;

Miller v. National Council Knights and Ladies of Security, 69 Kans. 234, 76 Pac. 830;

Supreme Lodge Knights of Pythias v. Knight, 117 Ind. 489, 3 LRA 409;

Conner v. Supreme Commandery Golden Cross, 117 Tenn. 549, 97 S. W. 306;

Gilmore v. Knights of Columbus, 77 Conn. 58, 58 Atl. 223, 107 Am. St. 17, 1 Am. & Eng. Ann. Cas. 715;

Shepperd v. Bankers Union of the World, 77 Neb. 85, 108 N. W. 188;
Norton v. Catholic Order of Foresters, 138 Ia. 464, 114 N. W. 893, 24 LRANS 1030.

FOURTH ASSIGNMENT OF ERRORS.

The Supreme Court of the State of Nebraska erred in refusing to give effect to the judgment and decree of the Honorable, The United States District Court for the District of Indiana in the case of *Joseph Holt et al. v. Supreme Lodge Knights of Pythias*, wherein several members of said order who held insurance certificates therein, and who were similarly situated with the plaintiff herein, in all respects, and who brought said suit in their own behalf and in behalf of all others similarly situated, for the express object and purpose of having said statutes increasing the rates, which are the same statutes involved in this action, set aside and held invalid and void, and to enjoin said Supreme Lodge Knights of Pythias from enforcing same, and which judgment and decree was appealed from, and affirmed, by the Honorable Circuit Court of Appeals for the Seventh Circuit which judgments and decrees are now in full force and effect (235 Fed. 885, 149 CCA 197, 248 U. S. 588, 63 L. ed. 434).

Point Twelve.

Where a class suit is brought by the plaintiff, or plaintiffs on his, or their own behalf and on behalf of all others similarly situate, all persons standing in such relation are considered as parties to the suit and are conclusively bound by the judgment and decree therein.

Mandeville v. Riggs, 2 Pet. 482;
Smith v. Swormstedt, 16 How. 288, 14 L. ed. 942 (Methodist Book Concern Case),
Bacon v. Robertson, 18 How. 480, 15 L. ed. 499;
Cockburn v. Thompson, 16 Ves. 321, 326, 328, 33 E R. 1005;
Hartford Life Ins. Co. v. Ibs, 237 U. S. 662, 59 L. ed. 1165, LRA 1916A, 765;
Duvall v. Synod of Kansas, 222 Fed. 669, 138 CCA 217;
Watson v. National Life, etc., Co., 162 Fed. 7, 12, 88 CCA 380;
Lovell v. St. Louis Mut. Life Ins. Co., 111 U. S. 264, 28 L. ed. 423;
Supreme Tribe of Ben Hur v. Cauble, 255 U. S. 356, 65 L. ed. 673;
Supreme Council Royal Arcanum v. Green, 237 U. S. 531, 59 L. ed. 1089, LRA 1916A, 771;
Looney v. Eastern Texas R. Co., 247 U. S. 214, 62 L. ed. 1084;
Equity Rule 38, U. S. Supreme Court 1912, 226 U. S. 659, 57 L. ed. 1643;
1 Foster, Federal Practice (6th Ed.), § 114.

Point Thirteen.

Such judgment or decree is res judicata in all subsequent suits by or between said society and all members thereof and their beneficiaries as to all matters actually litigated within the issues or which might properly have been litigated within said issues.

Fischli v. Fischli, 1 Blackf. 360, 12 Am. Dec. 251;
Alerding v. Allison, 170 Ind. 252, 258, 127 Am. St. 363 note;
State v. Buffalo County, 6 Neb. 461;
Slater v. Skeirving, 51 Neb. 108, 70 N. W. 492, 66 Am. St. 444;
Harris v. Harris, 36 Barb. 88;
Ruckman v. Union Railway Co., 45 Or. 578, 78 Pac. 748, 69 LRA 480;
Bates v. Bodie, 245 U. S. 520, 526, 62 L. ed. 444;
Mitchell v. First National Bank of Chicago, 180 U. S. 471, 45 L. ed. 627;
Dowell v. Applegate, 152 U. S. 327, 345, 38 L. ed. 463;
United States v. Haytien Republic, 154 U. S. 118, 129, 38 L. ed. 930;
Dimock v. Revere Copper Co., 117 U. S. 559, 566, 29 L. ed. 994;
Harshman v. Knox County, 122 U. S. 306, 317, 30 L. ed. 1152.

Point Fourteen.

A new ground of invalidity, or the omission thereof, which would have given the plaintiffs a valid cause of action, or any omitted facts which would have made out the plaintiff's case in such suit, does not render the judgment less conclusive or less binding.

Bell County, etc., School v. Pineville Graded School, 19 Ky. Law Rep. 789, 42 S. W. 92 (a statute held valid. Presumed to be based upon all possible objections to validity);

Jordan v. Van Epps, 85 N. Y. 427, 436 (defendant failed to set up all her claims of title);

Cannon v. Castleman, 162 Ind. 6 (failed to allege fraud in contract);

Martin v. Abbott, 1 Neb. (Unof.) 5[illegible], 95 N. W. 356;

Singer v. Hutchinson, 183 Ill. 606, 56 N. E. 388, 75 Am. St. 133 (failure to set up all defenses);

Hilgerson v. Hicks, 201 Ill. 374, 66 N. E. 360;

Holt County v. National Life Ins. Co., 80 Fed. 686, 25 CCA 469;

Board of Commissioners of Lake County v. Platt, 79 Fed. 567, 25 CCA 87;

Dimock v. Revere Copper Co., 117 U. S. 559, 29 L. ed. 994;

Andrews Bros. Co. v. Youngstown Coke Co., 86 Fed. 585, 596, 30 CCA 293;

Reynolds v. Mandel, 175 Ill. 615, 51 N. E. 649;

McIntire v. Williamson, 63 Kan. 279, 65 Pac. 244;

Kloke v. Gardels, 52 Neb. 117, 71 N. W. 955.

Point Fifteen.

When a question is necessarily decided in effect, though not in express terms, between the parties to a suit, they can not raise the same question in any other suit or in any other forum.

Gregory v. Molesworth, 3 Atkins 626, 26 E. R. 1160;

Henderson v. Henderson, 3 Hare 100, 67 E. R. 313;

Franke v. Franke, 15 Ind. App. 529, 549;

Griffin v. Wallace, 66 Ind. 410, 417;

Bates v. Bodie, 245 U. S. 520, 526, 62 L. ed. 444;
National Circle, Daughters of Isabella v. National Order Daughters of Isabella, 270 Fed. 723;
Straus v. American Publishers Assn., 201 Fed. 306, 119 CCA 544;
Sperry, etc., Co. v. Blue, 202 Fed. 82 120 CCA 1;
Mitchell v. First National Bank of Chicago, 180 U. S. 471, 45 L. ed. 627;
Mazzariello v. Doherty, 204 Fed. 245, 122 CCA 513;
Union Pacific R. Co. v. Wyler, 158 U. S. 285, 39 L. ed. 983;
Boston, etc., R. Co. v. Hurd, 108 Fed. 116, 47 CCA 615, 56 LRA 192;
Cotter v. Boston, etc., St. R. Co., 190 Mass. 302, 76 N. E. 910;
Columbus v. Webster Mfg. Co., 84 Fed. 592, 28 CCA 225, 43 LRA 195.

Point Sixteen.

Where a class suit is brought by the plaintiff on his own behalf, and on behalf of all others similarly situate, all persons standing in such relation are considered as parties to the suit and are bound by the judgment or decree therein.

1 Foster, Federal Practice (6th ed.), § 114;
Smith v. Swormstedt, 16 How. 288, 14 L. ed. 942 (Methodist Book Concern Case);
Mandeville v. Riggs, 2 Pet. 482;
Cockburn v. Thompson, 16 Ves. 321, 326, 328, 33 E. R. 1005;
Bacon v. Robertson, 18 How. 480, 15 L. ed. 499;

Hartford Life Ins. Co. v. Ibs, 237 U. S. 662, 59 L. ed. 1165, LRA 1916A, 765;

Duvall v. Synod of Kansas, 222 Fed. 669, 138 CCA 217;

Watson v. National Life, etc., Co., 162 Fed. 12, 88 CCA 380;

Harmon v. Auditor, 123 Ill. 132, 5 Am. St. 506, 13 N. E. 161, 164 (bond holders);

Supreme Tribe of Ben Hur v. Cauble, 255 U. S. 356, 65 L. ed. 673;

Equity Rule 38, U. S. Sup. Ct. 1912, 226 U. S. 659, 57 L. ed. 1643;

Supreme Council Royal Arcanum v. Green, 237 U. S. 531, 59 L. ed. 1089, LRA 1916A, 771 (reversing 206 N. Y. 591, 100 N. E. 411);

Looney v. East Texas R. Co., 247 U. S. 214, 62 L. ed. 1084.

Point Seventeen.

A judgment or decree constitutes a conclusive estoppel, until set aside, between the parties and their privies, as to all matters litigated, or which might have been litigated under the issues.

Dowell v. Applegate, 152 U. S. 327, 345, 38 L. ed. 463;

United States v. Haytien Republic, 154 U. S. 118, 129, 38 L. ed. 930;

Dimock v. Revere Copper Co., 117 U. S. 566, 29 L. ed. 994;

Harshman v. Knox County, 122 U. S. 306, 317, 30 L. ed. 1152.

Point Eighteen.

A plaintiff can not split a cause of action so as to litigate part of it in one suit and part in another; so the plaintiffs in the Holt case were required to present all objections to the validity of the statutes raising the rates, in their complaint or be barred thereafter from asserting them.

People v. Detroit, etc., R. Co., 157 Mich. 144, 121 N. W. 814;

Richardson v. Opelt, 60 Neb. 180, 82 N. W. 377;

Johnson v. Payne, 11 Neb. 269, 9 N. W. 81;

Beck v. Devereux, 9 Neb. 109, 2 N. W. 365;

United States, ex rel. v. City of New Orleans, 98 U. S. 381;

United States, ex rel. v. County Court of Knox County, 122 U. S. 306, 30 L. ed. 1152;

Ralls County v. United States, ex rel., 105 U. S. 733, 26 L. ed. 1220;

Mayor of Davenport v. United States, ex rel., 76 U. S. 409, 19 L. ed. 704;

Grand Island, etc., R. Co. v. Baker, 6 Wyo. 394, 71 Am. St. 943, 34 LRA 835, 841;

Mashlonpah v. Mayhew, 138 Wis. 561, 119 N. W. 826;

Nauyalis v. Philadelphia, etc., Co., 270 Fed. 93, — CCA —;

Werlein v. City of New Orleans, 177 U. S. 390, 44 L. ed. 817.

FIFTH ASSIGNMENT OF ERRORS.

The Fifth assognment of errors is as follows, to-wit:

The Supreme Court of the State of Nebraska erred in holding that the plaintiff in this action was not bound by the judgment and decree of the District Court of the United States for the District of Indiana in the case of *Joseph Holt et al., v. Supreme Lodge Knights of Pythias,* which suit was brought and maintained by said Joseph Holt and others, on behalf of themselves and of all others similarly situate, and wherein the validity of the supreme statutes of said Supreme Lodge Knights of Pythias, was affirmed and set at rest, the plaintiff herein, being similarly situate with the plaintiffs in said Holt case * * * and the same being a right guaranteed to the plaintiff in error under and by virtue of Article 4, Section 1, of the Federal Constitution, guaranteeing full faith and credit by one state to the judicial proceedings of every other state.

(Tr., p. 333, par. 4.)

Point Nineteen.

Article 4, Section 1, of the Federal Constitution is in part as follows:

> "Full faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof."

Point Twenty.

The judgments of the Federal Courts in the various states have the same binding effect upon the parties and their privies, as the judgments of the State courts.

Metcalf v. City of Watertown, 153 U. S. 671, 38 L. ed. 861;

Union, etc., Bank v. Memphis, 189 U. S. 71, 47 L. ed. 712;

Hancock National Bank v. Farnum, 176 U. S. 640, 45 L. ed. 619;

First National Bank v. City of Covington, 129 Fed. 792, 804;

Old Dominion Copper, etc., Co. v. Bigelow, 203 Mass. 159, 40 LRANS 314, 89 N. E. 193;

Northern Assurance Company v. Grand View Building Assn., 203 U. S. 106, 51 L. ed. 109;

Glencove Granite Co. v. City Trust, etc., Co., 118 Fed. 383, 55 CCA 212 (certiorari denied, 187 U. S. 649, 47 L. ed. 348);

Alkine Grocery Co. v. Richesin, 91 Fed. 79, 83.

Point Twenty-one.

A judgment of the Federal Court in a state is entitled to the same credit in another state as the judgment of the State Court of equal rank of the state wherein the federal judgment was rendered.

Metcalf v. City of Watertown, 153 U. S. 671, 38 L. ed. 861;

Union, etc., Bank v. Memphis, 189 U. S. 71, 47 L. ed. 712;

Hancock National Bank v. Farnum, 176 U. S. 640, 44 L. ed. 619;
Woolery v. Grayson, 110 Ind. 149, 10 N. E. 935;
Cincinnati, etc., R. Co. v. Wynne, 14 Ind. 385;
Fidler v. Gilchrist, 60 Ind. App. 363, 109 N. E. 796;
Crescent City, etc., Co. v. Butcher's Union, etc., 120 U. S. 141, 157, 30 L. ed. 614, 617;
Dupasseur v. Rochereau, 21 Wall. 130, 135, 22 L. ed. 588, 590 (state law);
Embry v. Palmer, 107 U. S. 3, 27 L. ed. 346;
Pittsburg, etc., R. Co. v. Long Island Loan, etc., Co., 172 U. S. 493, 43 L. ed. 528.

Point Twenty-two.

The Supreme Court of the United Stated has the exclusive final jurisdiction to determine whether the proper effect has been given by the courts of one state to the judgments of courts in other states.

Hadacheck v. Chicago, etc., R. Co., 74 Neb. 385, 104 N. W. 878.

Point Twenty-three.

Under the Federal Constitution a judgment rendered by the courts in one state must be given the same implication and force in all other states which it has in the courts of the state where rendered, and whatever pleas could be made thereto in the courts of such state, and no others, can be made to it in the foreign court.

Hampton v. McConnel, 3 Wheat. 234, 4 L. ed. 378, note top page 804;

Mills v. Durgee, 7 Cranch 481, 3 L. ed. 411, note top page 576;
American Mutual Life Ins. Co. v. Mason, 159 Ind. 15, 16, 18 N. E. 525;
Suydam v. Barber, 18 N. Y. 468, 471, 75 Am. Dec. 256;
Barras v. Bidwell, 3 Woods 7, Fed. Cas. No. 1039;
Wilcox v. Cassick, 2 Mich. 168;
Fletcher v. Ferrel, 9 Dana (Ky.) 377, 35 Am. Dec. 148;
Bank v. Wheeler, 28 Conn. 439, 73 Am. Dec. 684;
Fauntleroy v. Lum, 210 U. S. 230, 52 L. ed. 1039;
Sharon v. Hill, 26 Fed. 337, 391;
Morris v. Burgess, 116 N. C. 42, 21 S. E. 26.

THE SIXTH ASSIGNMENT OF ERROR.

The sixth assignment of error is as follows:

The Supreme Court of the State of Nebraska erred in holding that the plaintiff in this action was not bound by the judgment and decree of the District Court of the United States for the District of Indiana in the case of *Joseph Holt, et al. v. Supreme Lodge Knights of Pythias*, which suit was brought and maintained by said Joseph Holt and others, on behalf of themselves and of all others similarly situate, and wherein the validity of the supreme statutes of said Supreme Lodge Knights of Pythias, was affirmed and set at rest, the plaintiff herein being similarly situate with the plaintiffs in said Holt case, and the same being a right guaranteed to the plaintiff in error by virtue of § 905 R. S. U. S., § 1519 U. S. Comp. Stat. 1916, providing that the records and judicial proceedings of any state or territory or of any

such country, shall have such faith and credit given to them in every court within the United States as they may have by law or usage in the courts of the State from which they are taken. (Tr., p. 334.)

Point Twenty-four.

The force and validity of a judgment of another state must be determined by the law of the state rendering the same.

Section 905 R. S. U. S., § 1519, U. S. Comp. Statutes 1916, among other things provides that the records and judicial proceedings in one state "shall have such faith and credit given to them in every court within the United States as they have by law or usage in the courts of the State from whence the said records are or shall be taken."

Christmas v. Russell, 5 Wall. 290, 18 L. ed. 475. (An action in Mississippi Federal Court on a Kentucky judgment enforcing a Mississippi contract. Held, that the Mississippi state statute prohibiting Mississippi state courts from taking jurisdiction and enforcing judgments taken in other states where Mississippi would not render such judgments in her own courts, is void.)

Converse v. Hamilton, 224 U. S. 243, 56 L. ed. 749. (Wisconsin Court declines to permit suit on judgment of Minnesota Court enforcing double liability of stockholders on the ground that Wisconsin did not enforce such liability against her own people. Held, Wisconsin decision must be reversed.)

Point Twenty-five.

A final judgment or decree in the state of Indiana conclusively settles all questions within the issues in a cause, and also all other questions involved in the subject-matter of the litigation which might have been properly litigated in the action.

Fischli v. Fischli (1825), 1 Blkf. 360, 12 Am. Dec. 251;
Crouse v. Holman, 19 Ind. 30, 36;
Richardson v. Jones, 58 Ind. 240 243;
Marshall v. Stewart, 80 Ind. 189;
Ballard v. Franklin Life Ins. Co., 81 Ind. 239;
Elwood v. Beymer, 100 Ind. 504;
Indiana, etc., R. Co. v. Allen, 113 Ind. 581, 587;
Wilson v. Buell, 117 Ind. 315, 317, 20 N. E. 231;
Hoefgen v. Harness, 148 Ind. 224, 229, 47 N. E. 470;
Finley v. Cathcart, 149 Ind. 470, 477, 48 N. E. 586, 49 N. E. 381;
Walker v. Walker, 150 Ind. 317-325, 50 N. E. 68;
Maynard v. Waidlich, 156 Ind. 562, 573, 60 N. E. 348;
Skelton v. Sharp, 161 Ind. 384-386, 67 N. E. 535;
Cannon v. Castleman, 162 Ind. 6-8, 69 N. E. 455;
Ryan v. Rhodes, 167 Ind. 121, 126, 76 N. E. 249, 78 N. E. 330;
Alerding v. Allison, 170 Ind. 252, 258, 83 N. E. 1006, 127 Am. St. 363;
Knotts v. Clark Construction Co., 131 N. E. (Ind.) 921.

THE SEVENTH ASSIGNMENT OF ERRORS.

The seventh assignment of errors is as follows:

The Supreme Court of the State of Nebraska erred in holding that the plaintiff, being the defendant in error herein, is not estopped by virtue of his membership in said Supreme Lodge Knights of Pythias as created by federal statute, 28 U. S. Stat. at Large, pp. 96, 97, from again raising the question of the validity of the rates enacted by said Supreme Lodge Knights of Pythias in 1910, for the reason that Joseph Holt and others in their own behalf, and in behalf of all others similarly situate, including the defendant in error's assured, brought and maintained a suit for the purpose of declaring void the same statutes involved in this action, and wherein a judgment and a decree of the United States District Court for the District of Indiana was rendered that said statutes were valid and obligatory. (Tr., p. 334, par. 2.)

Point Twenty-six.

Apart from the fact that a stockholder is conclusively presumed to be represented in and to be a party to a class suit, a judgment duly rendered by a court of competent jurisdiction which is binding upon the corporation, is equally binding upon the stockholders of such corporation, and they are estopped after litigation by their company from again raising the same question in a suit by themselves against the same corporation.

Converse v. Ayer, 197 Mass. 443, 84 N. E. 98;
Howarth v. Lombard, 175 Mass. 570, 56 N. E. 888, 49 LRA 301;

King v. Cochrane, 76 Vt. 141, 56 Atl. 667, 104 Am. St. 922;
Selig v. Hamilton, 234 U. S. 652, 58 L. ed. 1518;
Converse v. Hamilton, 224 U. S. 243, 56 L. ed. 749;
Bernheimer v. Converse, 206 U. S. 516, 51 L. ed. 1163;
Irvine v. Baker, 225 Fed. 834;
Spargo v. Converse, 191 Fed. 823, 112 CCA 337;
Goss v. Carter, 156 Fed. 746, 84 CCA 402;
Johnson v. Libby, 111 Me. 204, 88 Atl. 647, Ann. Cases 1916-C 681.

(The above cases were for the recovery of stockholders' liability, they are strictly analogous to the case at bar for the reason that in this case the society had increased its rates so as to mature its obligations and the present suit was brought to restrain the society from enforcing the increased liability.)

THE EIGHTH ASSIGNMENT OF ERRORS.

The eighth assignment of errors is as follows:

The Supreme Court of the State of Nebraska erred in holding that the Supreme Lodge Knights of Pythias did not have and maintain, at the time of the enactment of the statutes in question, increasing the rates, a representative form of government, whereas it had and maintained at said time and ever, the same form of government which it had at its creation by federal statute, 28 U. S. Statute at Large, pp. 96, 97.

Point Twenty-seven.

Where a corporation is created with a certain form of government and it continues to exercise its duties in strict accordance with the form designated and prescribed by said statute creating it, neither its members, nor their privies, have the right to attack such form of government in an action for benefits.

Thomas v. Musical Mutual Protective Union, 121 N. Y. 45, 24 N. E. 24, 8 L. R. A. 175;
Bauer v. Sampson Lodge Knights of Pythias, 102 Ind. 262;
People v. St. George's Society, 28 Mich. 261;
Kent v. Quicksilver Mining Company, 78 N. Y. 159.

THE NINTH ASSIGNMENT OF ERRORS.

The ninth assignment of errors is as follows:

The Supreme Court of the State of Nebraska erred in holding that the Supreme Lodge Knights of Pythias did not have and maintain at the time of the enactment of the statutes in question, increasing the rates, a representative form of government, whereas it was alleged in the answer and shown by the evidence that said question was expressly decided adversely by the judgment and decree of the United States District Court for the District of Indiana, in the case of Joseph Holt and others against Supreme Lodge Knights of Pythias, wherein Joseph Holt and others sued in their own behalf and in behalf of all others similarly situate, including defendant in error's assured, to set aside said statutes increasing the rates, as invalid and void. (Tr., p. 334, par. 4.)

Point Twenty-eight.

The question whether the Supreme Lodge Knights of Pythias maintained a representative form of government at the time of the increase of rates involved in this cause was directly involved in the issues in the Holt case and in the special findings in said cause. It was expressly found that the plaintiff in error did have and maintain a representative form of government at said time and at all other times and the said special findings were specially approved by the court; and judgment was rendered thereon for the plaintiff in error.

The defendant in error herein is therefore concluded by said judgment in said Holt case from litigating said question of representative form of government over again in this or any other cause of action.

(See authorities heretofore cited under points 13-18, pages 41-46.)

BRIEF OF ARGUMENT.

By this action defendant in error seeks to recover upon a benefit certificate issued by the plaintiff in error to her decedent, designating the defendant in error as his beneficiary. The decedent paid his dues regularly until January 1, 1911, at which time the newly enacted increased rates took effect. He refused to pay the increased rate but continued to tender the old rate to the date of his death. The real question at issue is the validity of the increased rates. At his death, proper proofs were submitted and liability denied, and this action was begun. At the first trial of the cause the court found in favor of the plaintiff in error. The judgment following said decision was reversed by the Supreme Court of Nebraska on the ground that the plaintiff in error did not have nor maintain a representative form of government and therefore the statutes increasing the rates were void. A second trial of said cause resulted in a decision in favor of the defendant in error and the judgment rendered thereon was affirmed by the Supreme Court upon the same ground, that is, that the plaintiff in error did not have nor maintain a representative form of government and therefore the increase of rates was void.

PLAINTIFF IN ERROR CREATED BY FEDERAL STATUTES.

The plaintiff in error was created by a special act of Congress (28 U. S. Stat. at Large, pp. 96-97) (Tr., pp. 50-51). The entire rights and charter powers of this society are contained within the terms of said federal statute. A reference thereto will show that certain individuals, naming them, to-

gether with the officers and members of the Supreme Lodge, and "their successors, be and they are hereby incorporated and made a body politic and corporate." The stipulation in evidence in this case shows that the Supreme Lodge of said corporation has remained the same from the day of its incorporation to the present time and the method of selecting the members thereof has remained the same from that day until now.

It is evident, therefore, that if the plaintiff in error's supreme statute of 1910, increasing the rates—the one in question here—was not duly enacted, then there are no laws nor regulations of any kind which have been duly enacted and the corporation has been transacting its business since 1894 under a set of Supreme Statutes and laws which are wholly void. The only workable principle of law which could be applicable under such circumstances would be that of estoppel. Estoppel as against the corporation, but not in its favor. In other words, the members of the corporation and third persons may, at their pleasure, enforce claims and liabilities against said corporation, but it may not bring any action and may not defend against any that are brought, by reason of the supposed fact that it has not had nor maintained a representative form of government sufficient to make its action valid.

Rate Litigation.

The increase of rates, the validity of which constitutes the sole question in this case, has been the subject of more or less litigation since its enactment. A short history of this litigation will be useful in the disposition of this case. Immedately after January 1, 1911, the date when said in-

crease went into effect, many actions were brought in various states of the Union. There were more than 100 filed in the State of Texas alone. Many were filed in the State of Mississippi, some in Tennessee, some in Nebraska, some in Missouri, some in New York, some in Indiana, and some in a few other states.

THE HOLT CASE.

On January 25, 1911, a suit was filed in the District Court of the United States for the District of Indiana, by Joseph Holt and nineteen others, citizens of the State of Louisiana, "on behalf of themselves and all other persons similarly situate," against the plaintiff in error for the express purpose of having said rates adjudged invalid and for an injunction to restrain the officers of the insurance department from putting into execution the said increase of rates, and also asking for the appointment of a receiver to take charge of the assets of said corporation and to administer the same. These plaintiffs were members of the fourth class, which was the same class to which the decedent belonged on whose certificate this action is based. The plaintiffs therein, and the decedent herein, were all members of the fourth class holding certificates in identical words with the exception of names and dates. An amended answer was filed in this case and also a cross-complaint was filed by the plaintiff in error. The plaintiff in said case filed a reply and in the course of this litigation which was heard by the Master in Chancery one of the principal questions to be decided and which was actually decided, was the validity of the statutes increasing the rates. The validity of the same statutes is the sole question involved in this case. The Master in Chancery reported his special finding of facts (Tr., pp. 208-

244). The third finding, in part, is as follows (Tr., p. 210, point three):

> "That said original corporation was during its entire existence and said defendant [plaintiff in error] is and has been since its incorporation a fraternal beneficiary society; that neither the defendant nor its said predecessor was organized or was ever conducted for profit; that each of said corporations during the entire period of their existence respectively possessed a lodge system and a ritualistic form of work and had a representative form of government."

Finding No. 27, is as follows (Tr., p. 243, point 27):

> "That the legislation of the defendant [plaintiff in error] with reference to the creation of the fifth class, the transfer of members from the fourth class, *the rerating of the fourth class, which became effective January* 1, 1911, and the use of the expense fund of the Insurance Department for the joint expenses of the fourth and fifth classes *was all duly and legally adopted by the said defendant in pursuance to the constitution and laws of said defendant* and in accordance with the mode therein prescribed for the adoption of amendments and the enactment of new legislation."

The Master stated conclusions of law in favor of the defendant [plaintiff in error].

The complainants filed their exceptions to the Master's report. The fourth exception so filed by said complainants was in part as follows (p. 246, Par. 4):

> "To the 27th finding of fact, in this, that the Master erroneously found therein that the legisla-

> tion of the defendant with reference to the * * * *rerating of the fourth class, which became effective Jan.* 1, 1911" * * * *was all duly and legally adopted by the defendant* in pursuance to the constitution and laws of the defendant, and in accordance with the mode therein prescribed for the adoption of amendments and the enactment of new legislation."

Said exception, and the argument of counsel thereon were duly heard by the judge of said Federal District Court and said exceptions were overruled and the report confirmed. A decree dismissing said bill of complaint for want of equity was entered (Tr., p. 250, Par. 3).

An appeal was duly prayed and perfected from said decree and the same was heard by the Circuit Court of appeals for the Seventh Circuit and by said court decided on July 18, 1916. The judgment of the District Court was affirmed. Said decision is found in Tr., pp. 251-254. See *Holt v. Supreme Lodge Knights of Pythias*, 235 Fed. 885, 149 CCA 197.

An appeal was perfected thereafter to the Supreme Court of the United States but said appeal was dismissed. *Holt v. Supreme Lodge Knights of Pythias*, 248 U. S. 588.

MIMS CASE.

One of the multitude of cases filed in the State courts of Texas after a hearing in the trial court was decided in favor of the plaintiff. An appeal was perfected to the Court of Civil Appeals of said State which court held that the legislation increasing the rates, here in question, was invalid and

void. The said Court of Civil Appeals affirmed the judgment of the trial court. See:

Supreme Lodge Knights of Pythias v. Mims, 167 S. W. (Tex. Civ. App. 835).

A writ of error was duly prayed and granted to the Supreme Court of the United States. This was the first of all of the cases to be heard by this Honorable Court. The judgment of said Court of Civil Appeals was reversed. *Supreme Lodge Knights of Pythias v. Mims*, 241 U. S. 574, 60 L. ed. 1179.

SMYTH CASE.

One Smyth brought his action against the plaintiff in error in the United States District Court for the Western District of New York. It was held by said court that the legislation increasing the rates here in question was invalid on the ground that it constituted a breach of plaintiff's contract. See *Smyth v. Supreme Lodge Knights of Pythias*, 198 Fed. 967.

An appeal therefrom was duly perfected by the Supreme Lodge which appeal was heard and decided by the Circuit Court of Appeals for the second circuit and the judgment of the district court was affirmed. See *Smyth v. Supreme Lodge Knights of Pythias*, 220 Fed. 438, 137 CCA 32.

An appeal was duly perfected from the judgment of the said Circuit Court of Appeals to this Court. This Court, on the authority of the Mims case, reversed the judgment of said Circuit Court of Appeals.

Supreme Lodge Knights of Pythias v. Smyth, 245 U. S. 594, 62 L. ed. 492.

It was held by this court, in said Mims case, that the legislation increasing the rates was legally enacted; that such increase was within the charter rights of the corporation, and withal, that it was the duty of the Supreme Lodge to establish and maintain rates sufficient to protect and mature all of the benefit certificates outstanding and to preserve and protect the life of the society so that it might properly fulfill its charter duty of furnishing to such members as might desire safe insurance payable to their designated beneficiaries.

The Supreme Court of the State of Mississippi, in a case appealed thereto, held that the corporation was acting within its charter power in increasing the rates and that all members were bound by said increased rates.

Neuman v. Supreme Lodge Knights of Pythias,
110 Miss. 371, 70 So. 241, LRA 1916C, 1051.

A similar case was decided by the Supreme Court of Tennessee but is unreported. In none of these cases was the question of res judicata raised or insisted upon.

In the present case, however, the plaintiff in error has specially set up the defense of res judicata and is maintaining that the question of the validity of the legislation increasing the rates has been judicially determined in such a manner that all members of the fourth class are bound thereby. The Holt case was in all respects a class suit, brought by a large number of fourth class members on their own behalf and on behalf of all others similarly situate, which included the holders of all the certificates involved in this litigation. There should be an end to litigation sometime. There can be no question but that the entire

subject of the validity of these statutes and of this increase of rates was exhaustively examined and judicially determined by the Federal District Court for the District of Indiana, and the decree entered in that case is binding upon all members throughout the membership of the order.

The Honorable Supreme Court of the State of Nebraska held that the Supreme Lodge of said order was not constituted in accordance with the statute of Nebraska requiring fraternal orders to have and maintain a representative form of government. It is proper to state that the learned Chief Justice and one of the Associate Justices dissented from the decision in this case. The question presents itself whether the federal constitution guaranteeing full faith and credit to the judicial acts of the courts of other states, is applicable to a case like this. We have seen that the question of representative form of government was specifically litigated in the Holt Case and it was especially decided that the plaintiff in error did have and maintain at all times a representative form of government. It would seem that this question having been determined in a class suit, the same should be considered as forever settled, not only because the defendant in error's decedent herein, must be considered a party plaintiff in that suit, but also because the federal constitution provides for the full faith and credit to be given to said decision in all other states. This is not a proceeding by the state of Nebraska but is a private litigation based upon a contract executed by the plaintiff in error, and it is simply and solely a question between the insurer and the insured's beneficiary. It has been held many times that where a judgment is rendered in one state, said judgment is enforceable in any other state under and by virtue of the Fed-

eral Constitution. It is immaterial whether the cause of action upon which this judgment was rendered was cognizable by other states or not. The courts of one state can not go into the merits of a cause of action where a judgment has been duly rendered by the courts of another state on said cause. It is necessary in order to obtain relief in such case, to set aside the judgment already rendered.

CONSTITUTIONAL AND STATUTORY REQUIREMENTS.

Article four, section one, of the Federal Constitution requires that full faith and credit shall be given in each state to the judicial proceedings of every other state; and Congress is given the power to prescribe the effect of such judicial proceedings.

Carrying out this latter provision, Congress, in 1790, enacted substantially what is now § 905, R. S. U. S., § 1519 U. S. Comp. Statutes 1916. This statute provides in part that "said records and judicial proceedings, so authenticated shall have such faith and credit given to them in every court within the United States as they have by law or usage in the courts of the state from which they are taken. It was early held that judgments of federal courts, rendered in the various states, come within the purview of this section and also of article four, section one, of the constitution. (See authorities heretofore cited under Points 21, 22 at page 48, 49 of this brief.) Under the recent decisions of this court in the cases of *Supreme Council Royal Arcanum v. Green*, 237 U. S. 531, LRA 1916A, 771, 59 L. ed. 1089, and *Hartford Life Ins. Co. v. Ibs*, 237 U. S. 662, 59 L. ed. 1165, LRA 1916A, 765, the plaintiff in error was entitled to prove that the issue involved in this case had been determined, settled

and adjudicated in the District Court of the United States for the District of Indiana.

The rights of the plaintiff in error were not merely to be permitted to introduce in evidence the said decree together with the proceedings, for such a right would have no legal compulsion; but the plaintiff in error was entitled not only to introduce the said proceedings and decree but to have them applied to the facts in this case and if they showed an adjudication of any of the questions involved in this action, then such question must be eliminated from further consideration in this case, and the decision of the Federal Court given full force and effect.

Hartford Life Ins. Co. v. Ibs, 237 U. S. 662, 59 L. ed. 1165, LRA 1916A, 765.

In this case the proceedings were stipulated showing the entire proceedings in the Federal Court, and that amongst the questions involved was the question of the representative form of government of the plaintiff in error and also the validity of the statutes increasing the rates of insurance. The records show conclusively that these questions were both determined in that suit in favor of the plaintiff in error. An appeal from that judgment resulted in its affirmance, and an appeal from such judgment of affirmance was dismissed in this Court.

It must be considered that the words "representative form of government" have the same meaning in Indiana as in Nebraska. An adjudication in Indiana that a corporation has and maintains a representative form of government is conclusive as between the parties all over the United States and having had their day in Court upon this ques-

tion, the membership of this order are concluded by the decree entered. If this were not so the entire question of the validity of the legislation increasing the rates would be open for consideration perpetually, and the society would be harassed by such a multiplicity of suits that their defense would bankrupt the society.

It may be argued that in the Holt case the plaintiff did not allege in their bill of complaint that the legislation increasing the rates was not enacted in conformity with all of the various provisions of the several states in respect to fraternal societies. It is an elementary principle of law that where legislation, be it federal, state, municipal or of a private corporation, is challenged in the courts on the ground of its alleged invalidity, the plaintiffs must allege every reason or ground therefor, or the judgment will forever conclude them not only upon the ground specifically alleged but on others as well. Plaintiff can not split a cause of action and try it in piecemeal. This is well shown in the case of *Bell County, etc., School v. Pineville Graded Schools*, 19 Ky. Law Rep. 789, 42 S. W. 92, wherein it was held that, having attacked the validity of the statute, all objections must be alleged or they will be concluded by the judgment.

In the case of *Holt County v. National Life Insurance Co.*, 80 Fed. 686, 25 CCA 469, the plaintiff sought to mandate certain officers to levy a tax for the payment of a judgment. The rate was fixed and the order made. Subsequently suits were brought by taxpayers to restrain the officers from collecting such taxes on the ground that the levy was in excess of the statutory rate. The Court held, however, that such a violation constituted a defense to the original action, and therefore, that the parties were concluded

by the rate fixed. This was a decision by the federal court of the district of Nebraska.

To the same effect is the *Board of Commissioners of Lake County v. Platt*, 79 Fed. 567, 25 CCA 87. An action had been brought against the Board of Commissioners and a judgment by default entered. The board issued bonds to pay such judgment. The plaintiff had purchased some of these bonds. The county refused to pay the coupons. Plaintiff brought an action on the coupons. The county pleaded that the bonds and the debt for which they were given were invalid because in excess of the constitutional limit of indebtedness for the county. It was further alleged that such defense was not made nor adjudicated when the judgment was rendered. The Federal Court, however, held that this question was foreclosed by the judgment rendered as conclusively as though such defense had been especially made. This rule is well illustrated by the case of *Bates v. Bodie*, 245 U. S. 520, 62 L. ed. 444. The plaintiff had procured a judgment for divorce and alimony in the state court of Arkansas. Subsequently, an action was brought in Nebraska for alimony from certain Nebraska lands owned by defendant, the complaint in Nebraska alleging that the Arkansas decree did not take into consideration such Nebraska lands.

An appeal was taken to the Nebraska Supreme Court which held that the plaintiff might proceed against the lands in the State of Nebraska, but this decision was reversed by this Honorable Court, on the ground that the Nebraska Supreme Court had not given full faith and credit to the Arkansas judgment. It was said that "our rule is that an estoppel by judgment is not only as to every matter which was offered and received to sustain or defeat the claim or de

mand but as to any other admissible matter which might have been offered for that purpose."

A suit was brought by a foreign corporation against a tax commissioner to restrain, on certain grounds, the imposition of a license tax. There was a plea that the plaintiff had theretofore sued in the state court, alleging different grounds, to restrain the levy of such tax and that the defendant had obtained a judgment. The Federal Court held that the matter was *res judicata* and that it was wholly immaterial that new grounds were alleged in the federal court.

Sperry, etc., Co. v. Blue, 202 Fed. 82, 120 CCA 1.

An action was brought by a bank on paper executed by a wife in Connecticut and delivered by her husband at Chicago. Pending an action in the Federal Court at Chicago, the bank filed its claim against her estate in Connecticut which claim was disallowed on the ground of suretyship. Under the statute of Connecticut this decision was affirmed on appeal. This judgment being subsequently pleaded in the Federal Court, it was held conclusive even though the contract was executed in Illinois and not in Connecticut, and even though the Illinois law permitted a married woman to become surety.

Mitchell v. First National Bank of Chicago, 180 U. S. 471, 45 L. ed. 627.

It was well said in the case of *Mazzariello v. Doherty*, 204 Fed. 245, 122 CCA 513, that "it is the imperative demand of the law that a party shall have his day in court and a full and fair trial; but it is not the policy of the law to split remedies or facts, in order that plaintiff may have

interminable trials for a single supposed grievance; and it is because of the demands of justice that litigation shall not be endless that the rule is established in Massachusetts in conformity with that which exists in England, and generally in this country that the parties are concluded by the judgment in the former action not only upon issues actually tried and determined, but upon all issues which might have been tried and determined in that action."

Another case illustrating this rule is *Kenney v. Supreme Lodge of the World, Loyal Order of Moose*, 252 U. S. 411, 64 L. ed. 638, 10 ALR 716.

The plaintiff had sued and recovered a judgment for negligence causing death, in the state of Alabama the death having occurred in the State of Illinois which had a statute forbidding the bringing of such actions outside of that state for death occurring within said state. The plaintiff brought suit on the Alabama judgment in an Illinois court. The Supreme Court of Illinois (235 Ill. 122, 129 N. E. 631, 4 ALR 964), held that the plaintiff had no right of action upon such judgment of Alabama. This Court, however, reversed said judgment holding that the full faith and credit clause of the Federal Constitution was thereby violated.

A judgment was recovered in Missouri upon a cause of action originating in Mississippi which cause was invalid by the statute of said state. The plaintiff, having recovered said judgment in Missouri brought an action thereon in Mississippi. The Mississippi Supreme Court (80 Miss. 737, 92 Am. St. 620), held that the plaintiff could not recover. This decision was reversed by the Supreme Court of the United States.

Fauntleroy v. Lum, 210 U. S. 230, 236, 52 L. ed. 1039, 1042.

This Court said:

> "The judgment of a state court should have the same credit, validity, and effect in every other court in the United States which it had in the State where it was pronounced, and that whatever pleas would be good to a suit thereon in such state, and no others could be pleaded in any other court in the United States," quoting Marshall C. J. in *Hampton v. McConnel*, 3 Wheat. 224.

STATE LICENSE.

It is stipulated in this case that the plaintiff in error was duly licensed to transact business within the State of Nebraska during the entire period of the time covered by this action. The Supreme Constitution and all Supreme Statutes were duly filed with the State Board of Accounts, as required by the statutes of that state. The act authorizing the plaintiff in error to transact business in that state was approved March 29, 1897. (Acts 1897, chapter 47.)

Section 1, thereof, is as follows:

> "Section 1. A fraternal beneficiary association is hereby declared to be a corporation, society or voluntary association, formed or organized or carried on for the sole benefit of its members and their beneficiaries, and not for profit. Each such society shall have a lodge system, with ritualistic form of work and representative form of government."

Section 2 of said act is as follows:

> "Section 2. Such societies shall make provisions for the payment of benefits in case of deaths, and may make provisions for the payment of benefits in case of sickness, temporary or permanent or physical disability, either as a result of a disease accident, or old age; provided, the period of life in

which payment of physical disability benefits on account of age commences shall not be under 70 years. Provided, the payment of such benefits in all cases shall be subject to compliance, by the member, with the contract, constitutions, rules and laws of the society. Provided, further, that this act shall not be construed to include fraternal orders which only provide for sick and funeral benefits, nor any fraternal beneficiary societies, order or association now organized under the laws of this state, until January 1, 1898; nor shall the contract between the holder of any certificate or the beneficiaries of such certificates and the society, order or association issuing the same, contain in certificate issued by any such society, order or association, organized under the laws of this state prior to January 1, 1898, be in any way affected by this act."

Section 9, thereof, is as follows:

"Section 9. Any such society organized under the laws of any other state, and not now doing business in this state, shall be permitted to do business within this state when it shall file with the auditor of public accounts a duly certified copy of its charts and articles of association, and a copy of its constitution and laws certified to by its secretary or corresponding officer, together with an appointment of the auditor of public accounts of this state as a person upon whom process may be served as hereinafter provided; and Provided, That such society shall be shown by proper certificate to be authorized to do business in the state, territory or province in which it is incorporated or organized. The auditor of public accounts may personally, or by some person to be designated by him, examine into the condition, affairs, character and business methods, accounts and books and investments of such society at its home office, which examination shall be at the expense of such society, and shall be made within 30 days after demand therefor, and the expense of

such examination shall be limited to $5.00 per day and the necessary expenses of travel and hotel bill. If the auditor, of public accounts, after such examination, is of the opinion that no permit should be granted to such society he may refuse to issue the same."

Section 12, thereof, is as follows:

"Section 12. The auditor of public accounts shall, upon the application of any such association, issue to it a permit in writing, authorizing it to do business within this state for which certificate and all proceedings connected therewith such society shall pay to said auditor of public accounts the fee of twenty dollars."

Section 16, thereof, is as follows:

"Section 16. Any of such association refusing or neglecting to make the report as provided in this act shall be excluded from doing business within this state. The auditor of public accounts must, within sixty days after the failure to make such report, or in case any such society shall exceed its powers, or shall conduct its business fraudulently, or shall fail to comply with any of the provisions of this act, give notice in writing to the attorney general, who shall immediately commence an action against such society to enjoin the same from carrying on any business. No society so enjoined shall have authority to continue in business until such report shall be made, or overt act or violation complained of shall have been corrected, nor until the costs of such action be paid by it; Provided, that the court shall find that such society was in default, as charged, whereupon the auditor of public accounts shall reinstate such association, and not until then shall such association be allowed to again do business in this state. Any officer, agent, or person acting for any such association or subordinate body thereof within this state, while such association shall be so enjoined or

prohibited from doing business pursuant to this act, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine of not less than twenty-five dollars, nor more than two hundred dollars, or by imprisonment in the county jail not less than thirty days nor more than one year or both fine and imprisonment, in the discretion of the court."

Section 17, thereof, is as follows:

"Section 17. Any person who shall act within this state as officer, agent or otherwise, for any such association which shall have failed, or neglected or refused to comply with, or which shall have violated any of the provisions of this act, or shall have failed or neglected to procure from the auditor of public accounts, proper certificate of authority to transact business as provided by this act, shall be subject to the penalty provided in the next preceeding section for the misdemeanor therein specified."

Under the provisions above quoted which were all complied with by the plaintiff in error, there is no attempt on the part of the legislature to nullify any certificates issued by the society so licensed. The only action reserved in case of a violation of any of the provisions is the right on behalf of the state to institute proceedings to prevent the society from transacting any further business in the state.

The statute does not attempt to invalidate any of the obligations either of the society or of the member.

As said in the case of *United States v. Arredondo*, 31 U. S. 691, 729, 8 L. ed. 547:

"It is a universal principal, that where power or jurisdiction, delegated to any public officer or tribunal over a subject matter, and its exercise is confided to his or their discretion, the acts so done are

binding and valid as to the subject matter, and individual rights will not be disturbed collaterally."

To the same effect see:

Noble v. Union, etc., R. Co., 147 U. S. 165, 174, 37 L. ed. 127 (Secretary of Interior's decision that railroad company came within purview of the law.);

St. Louis, etc., Co. v. Kemp, 104 U. S. 636, 26 L. ed. 875 (Officers of land department's decision as to facts essential for patent.);

French v. Fyan, 93 U. S. 169, 23 L. ed. 812 (Decision of Secretary of the Interior as to swamp lands.);

In this case the state of Nebraska delegated to the Auditor of Public Accounts the duty to examine into the organization and the affairs of all fraternal societies wishing to do business in that state, and which were organized outside of said state, and to license the same if he found they had complied with the laws governing such societies. It was further provided that if, after having admitted any such society, they subsequently failed to conform to the laws of said state, it would be his duty to report the same to the Attorney General who must immediately commence an action to oust said society from doing business within the state. This was the remedy prescribed and the sole remedy given by the statute.

We do not deem it necessary to argue that the plaintiff in error cannot furnish insurance to its members and charge the residents of one state more than the residents of another state, giving them the same benefits. It is a funda-

mental principle of the law of fraternal societies that all members shall be treated equally.

Supreme Lodge Knights of Pythias v. Mims, 241 U. S. 574, 60 L. ed. 1179.

In respect to the question of the representative form of government the plaintiff in error has the usual and customary form of government for such societies. The local lodges in the various states elect delegates to their various grand lodge within the states. These grand lodges, in turn, elect delegates to the Supreme Lodge. All members of the society may vote in the local lodges for such delegates. All members of the grand lodge may vote for delegates to the Supreme Lodge.

There are now and always have been a few officers who sit in the Supreme Lodge *ex officio*. The Past Supreme Chancellors may sit in the Supreme Lodge and take part in its proceedings. There may be several of these Past Supreme Chancellors of the order living at any particular time. While these were not elected immediately preceding a session of the Supreme Lodge, they were elected to the office of Supreme Chancellor by the entire Supreme Lodge. The election of the Supreme Chancellor clothes him with the right to be a member of the Supreme Lodge during the remainder of his life, so long as he is in good standing in the order. Surely there is no constitutional objection to such a provision and it surely would not constitute a deprivation of a representative form of government for such society to avail itself of the vast experience of those who have held the highest office of the society. Our federal government does not lose its representative form by rea-

son of the fact that the President has been authorized to surround himself with a cabinet who advises with him in reference to the conduct of the affairs of the government, even though he selects them himself. We contend, therefore, as a matter of law that the plaintiff in error has strictly observed and carried out the requirement of the law requiring it to maintain a representative form of government. Before the adoption of the 19th amendment, our government had a representative form even though the great majority of our people did not have the right to vote. Neither the women nor minors were permitted to take part in the elections. This excluded probably 75% of all of the citizens. The fact that some of the members of the order do not avail themselves of the privilege of carrying insurance benefits does not have the effect of rendering the society unrepresentative. The insurance feature of this society is incidental to the main objects. It is one of the benefits of the society which is carried out and continued by the entire society.

The member might be insured today and might drop his insurance tomorrow. At all times he would remain a member of the order, and be entitled to take part in all of its proceedings. The fact that the society extends the insurance privilege to those of its members wishing the same does not thereby disqualify it from continuing such insurance. This question was thoroughly considered in the case of *Westerman v. Supreme Lodge Knights of Pythias*, 196 Mo. 670, 94 S. W. 470, 5 L. R. A. N. S. 1114. In that case it is said:

> "At the very threshold of the discussion of the legal propositions involved in this controversy, it is well first to fix definitely the nature and character

of the defendant association. The Supreme Lodge, Knights of Pythias, is the defendant and appellant in this case. It must not be overlooked that the plaintiff is seeking to recover a judgment against this defendant, the Supreme Lodge, Knights of Pythias, and that it is by no means a proceeding against the Endowment Rank [Insurance Department] of that association. The Supreme Lodge, Knights of Pythias, was first organized under a general act of Congress authorizing the formation of such society for benevolent purposes, in the District of Columbia. It was subsequently reincorporated by a special act of Congress. Its charter provides that its property and assets shall not be divided among its members, but shall descend to their successors. It further declares that the association shall not be conducted for gain or profit, and that its purpose shall be fraternal and benevolent. It has no lawful power to engage in the general life insurance business, or to issue ordinary life insurance policies for gain or profit to its members."

"In this case it is expressly admitted by stipulation that the defendant, at the time of the death of Jacob Westerman, in whose favor the certificate here sued on was issued, and long prior thereto, was authorized by the superintendent of insurance of the state of Missouri to do business in this state as a fraternal beneficiary association. It appears from the constitution adopted by the defendant, Supreme Lodge, Knights of Pythias, which was offered in evidence, that the defendant has a lodge system as a secret society, with a ritualistic form of work and a representative form of government, and that it is organized and carried on for the sole benefit of its members and their beneficiaries, and not for profit; that the certificates issued by the defendant through the Endowment Rank [Insurance Department] provide that the benefits shall be payable alone to the families, heirs, blood relatives, or persons dependent upon the members, and that the funds from which the payment of such benefits are made, and the ex-

penses of the association, are derived from assessments and dues collected from the members of such rank who are eligible to obtain benefit certificates. That the defendant in this cause is a fraternal beneficiary association, we are of the opinion there can be no dispute; hence we take it that furnishes the reason for the contention of respondent being directed to the Endowment Rank [Insurance Department], and insisting that such rank should be treated as a separate organization engaged in purely regular or old-line insurance business. However, as suggested by one of the learned counsel for appellant, it must not be overlooked that the certificate sued on was issued by the Supreme Lodge, Knights of Pythias, and not by the Endowment Rank [Insurance Department]. The suit is against the Supreme Lodge, Knights of Pythias, not against any portion of its members designated as belonging to the Endowment Rank [Insurance Department]. The contract is the contract of the association. A careful analysis of the record before us, which discloses the organization of the defendant association, indicates very clearly that the Endowment Rank [Insurance Department] is not a separate organization or society formed among the members of the defendant fraternal association. It is simply a designation of those of the members of the fraternal beneficiary association who have chosen to apply for and receive the benefit of certificates provided for by the association. It does not exist as a separate institution. It is a part and parcel of the Supreme Lodge; whatever business it transacts is done under the supervision of the Supreme Lodge. It is under the control of the Supreme Lodge, and all contracts made by members of the order for certificates are made by the Board of control in the name of and for the Supreme Lodge Knights of Pythias. All the laws, rules and regulations applicable to members of the association of the Endowment Rank [Insurance Department] are enacted by the Supreme Lodge, in which all of the members participate in

convention assembled. The statute does not contemplate that all the members of an association of this character must have benefit certificates of the same kind. It is only essential to constitute the defendant a fraternal beneficiary association that it be organized for the benefit of its members, and not for gain or profit. It must have a representative form of government and ritualistic form of work; having these essential requirements, such association is authorized to issue benefit certificates to any of its members, and it is by no means a condition precedent to make it a fraternal beneficiary association, as contemplated by the statute, that it shall issue such benefit certificates to each and every one of the members of the association. The true test as to whether this is a fraternal beneficiary association is: Has it formed or organized and is it carried on for the sole benefit of its members and their beneficiaries, and not for profit? Has it a lodge system with a ritualistic form of work and a representative form of government? By no means is there any condition embraced in this test that all or any part of the members of such association have received certificates. The mere fact that members of the association, who are entitled upon application to receive certificates from the defendant association, are designated as the Endowment Rank [Insurance Department], falls far short of making them a separate and distinct organization, so formed for the purpose of issuing insurance policies. Those who belong to the endowment class are not members of that class by reason of having joined a distinct society or separate organization, but are designated as belonging to that class by reason of being members of the order of Knights of Pythias. All of the contracts of the defendant association and the benefit certificates issued to members belonging to the endowment class are predicated upon the act of Congress creating it and fixing the scope and purposes of the business in which it may engage. The endowment class, under the charter of the defendant asso-

ciation, is directly under the supervision and control of the Supreme Lodge, Knights of Pythias. Those designated as the endowment class of this association are only authorized to act by virtue of the provisions of the charter of the order of the Knights of Pythias, and every act performed and the issuing of the benefit certificates are only given force and vitality from the organized association of the Knights of Pythias. It is unlike a separate and distinct organization, which has the sole and absolute control of the business of such separate organization, and the only connection that such distinct organization has with some fraternal beneficiary association is to limit the membership of such separate organization to those who are members in good standing in the main fraternal organization. That is not this case. Here we have an Endowment Rank [Insurance Department], which terms are simply used to designate those holding benefit certificates, which designated class are under the control of a board which are elected by the entire membership of the Supreme Lodge. It certainly would not be insisted that if this fraternal organization would undertake to execute and put in force powers authorized by its charter, such as issuing benefit certificates; should select a committee composed of its members to transact such business and do as is done by the Endowment Rank [Insurance Department], report their proceedings to the main organization—that such committee and those holding certificates with whom they had transacted business for the association would be treated as a separate and distinct organization. After a careful consideration of the disclosures of the record now before us, we see no escape from the conclusion that the benefit certificate in suit must be treated as one issued by a fraternal beneficiary association. It was so treated by the insurance department of the state government and it is expressly admitted that this association was authorized by the superintendent of insurance,

> at the time of the death of Jacob Westerman and long prior thereto, to do business in this state as such fraternal beneficiary association."

This same subject was referred to in the case of *Tice v. Supreme Lodge Knights of Pythias*, 204 Mo. 349, 100 S. W. 519. The court observed that "the essential fact in this connection is that no one save a member can get insurance, though all need not take it—an arrangement that was indorsed as a lawful one for a beneficiary society to establish in *Laker v. Royal Fraternal Union*, 95 Mo. App. 353, 74 S. W. 705."

We insist, therefore, that the defendant in error ought not to recover in this case for the reason that her rights are limited, and regulated by the performance of her decedent's duty, and of his keeping his certificate in force. He had no right to cease paying his dues and assessments when it became a necessity to increase such dues and assessments. The plaintiff in error not only had the right to make the increase, but it was simply performing its highest duty under the charter, which was a federal statute, to make said increase. The fact that her decedent had been carried for many years at a great loss, gave him no right to require the plaintiff in error to continue carrying him at such loss. It was no hardship upon the members, all of whom had been carried at a loss to be required on and after January 1, 1911, to pay the rates which were absolutely necessary to mature not only their certificates but the certificates of all others as well. The increased rates automatically provide for a waiver of a monthly payment as soon as a surplus accumulates sufficient to do so. It is thus absolutely assured to all members that the rates

fixed can never exceed the actual amounts necessary to mature the certificates, and this the plaintiff in error had the right to do.

Supreme Lodge Knights of Pythias v. Mims, 241 U. S. 574, 60 L. ed. 1179.

The plaintiff in error, therefore, prays that the judgment of the Supreme Court of the State of Nebraska appealed from, be reversed.

T. P. LITTLEPAGE,
W. J. CONNELL,
GEORGE A. BANGS,
SOL H. ESAREY,
WARD H. WATSON,
Attorneys for plaintiff in error.

Number 214.

IN THE

SUPREME COURT

OF THE

UNITED STATES

October Term, 1923.

SUPREME LODGE KNIGHTS OF PYTHIAS, PLAINTIFF IN ERROR,

V.

GEORGE O. MEYER, DEFENDANT IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEBRASKA.

BRIEF OF DEFENDANT IN ERROR.

D. W. LIVINGSTON,
C. F. REAVIS,
Attorneys for Defendant in Error.

WEKESSER-BRINKMAN CO., Law Briefs, Lincoln, Neb.

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D. W. LIVINGSTON,
C. F. REAVIS,
Attorneys for Defendant in Error.

STATEMENT OF CASE.

The statement of the case by the plaintiff in error is quite full and substantially correct, but we wish to add that the matter of the effectiveness of the increase of rates provided for by the amendment to the constitution of the plaintiff in error society January 1, 1911, is an issue under the pleadings (Tr. pp. 18, 19 and 25).

Under the laws of Nebraska, adopted in 1897, under which the plaintiff in error society claims to operate, it was the duty of the society to file with the auditor of public accounts a copy of its constitution and by-laws, duly certified by the secretary or corresponding officer. There is no proof that such copy was ever filed. This law further provided that before any amendment, change or alteration in the constitution or by-laws of such society should be in force a copy thereof, duly certified by its secretary or corresponding officer, shall be filed by the society with the Auditor of Public Accounts. There is no proof that such copy was filed.

Express provision is contained in the amendment affecting the rates here in question exempting members from the operation thereof, and reserving the former section fixing rates to apply to them in any state wherein any legal or equity proceeding there has been a determination that such amendment does not apply (Tr. p. 288).

POINTS AND AUTHORITIES.

Point I.

There is no federal question involved in this case and the Supreme Court is without jurisdiction, and the petition in error must be denied.

Murdock v. *Mayor and Alderman of Memphis*, 20 Wall. (U. S.) 590, 22 L. Ed. 429.

Allen v. *Arguinbau*, 198 U. S. 149, 49 L. Ed. 990.

Leathe v. *Thomas*, 207 U. S. 93, 52 L. Ed. 118.

Arkansas Southern Railroad Company v. *German National Bank*, 207 U. S. 270, 52 L. Ed. 201.

Waters-Pierce Oil Company v. *Texas*, 212 U. S. 112, 53 L. Ed. 431.

Point II.

The Act of Congress creating the plaintiff in error society expressly provided that such corporation should not have

power to amend its constitution so as to conflict with the laws of the United States or of any state.

28 U. S. Statute at Large, pp. 96 and 97.

Point III.

The laws of Nebraska require that every fraternal society insuring the lives of its members shall file with the auditor of public accounts a copy of its constitution and by-laws, duly certified to by the secretary or corresponding officer, and before any amendment, change or alteration thereof shall take effect or be in force a copy of such amendment, change or alteration, duly certified to by its secretary or corresponding officer shall be filed with the Auditor of Public Accounts of the state.

Section 22, Chapter 47, Acts of Nebraska for year 1897.

Section 7927, Comp. St. Nebraska 1922.

Knights of Maccabees v. *Nitsch*, 69 Neb. 372, 95 N. W. 626.

Hart v. *Knights of Maccabees*, 83 Neb. 423, 119 N. W. 679.

Metzger v. *Royal Neighbors*, 86 Neb. 61, 124 N. W. 913.

Tomson v. *Iowa Traveling Men's Association*, 88 Neb. 399, 129 N. W. 529.

Point IV.

The state may impose on a foreign corporation, as a condition of coming into and doing business within its territory, any terms, conditions, and restrictions it may think proper, not repugnant to fundamental laws.

United States Bank of Augusta v. *Earle*, 13 Peters 519, 10 L. Ed. 274.

Lafayette Insurance Company v. *French*, 18 Howard 404, 15 L. Ed. 451.

Paul v. *Virginia*, 8 Wallace 168, 19 Ed. 357.

Ducat v. *Chicago*, 10 Wallace 410, 19 L. Ed. 972.

Doyle v. *Continental Insurance Company*, 94 U. S. 535, 24 L. Ed. 148.

Prudential Insurance Company of America v. *Check*, 259 U. S. 530, 66 L. Ed. 1044.

Interstate Amusement Company v. *Albert*, 239 U. S. 560, 60 L. Ed. 439.

State v. *Insurance Company of North America*, 71 Neb. 320, 99 N. W. 36.

Point V.

Under the laws of Nebraska a fraternal beneficiary society insuring the lives of its members is required, among other things, to have a representative form of government.

Section 1, Chapter 47, Acts of Nebraska for year 1897.

Section 6635, Cobbey's Anno. St. Nebraska 1911.

Point VI.

Where, under the provisions of the constitution and by-laws of a fraternal beneficiary association, the delegates to the governing body thereof, regularly elected by the members of said association, cannot of themselves, and without the participation of members of committees appointed from members outside of such delegates, legally and of right adopt, alter or amend the edits and laws of such association and absolutely control the government of the same, such governing body is not a representative body, and an association so constituted and governed cannot be said to have a representative form of government.

Briggs v. *Royal Highlands*, 84 Neb. 834, 122 N. W. 69.

Johnson v. *Bankers Union*, 83 Neb. 48, 118 N. W. 1104.

Point VII.

The Supreme Court must accept the interpretation of the terms of a state statute placed upon it by the highest court of the state.

Thornton v. *Duffy*, 254 U. S. 361, 65 L. Ed. 304.

Ward & Gow v. *Krinsky*, 259 U. S. 503, 66 L. Ed. 1033.

Quong Ham Wah Co. v. *Industrial Accident Commission*, 255 U. S. 445, 65 L. Ed. 723.

Point VIII.

The Holt case upon which plaintiff in error relies as *res adjudicata* was commenced January 25, 1911, under former equity rule No. 38, which was as follows: "When the question is one of common or general interest to many persons constituting a class so numerous as to make it impracticable to bring them all before the court, one or more may sue or defend for the whole. But in such cases the decree shall be without prejudice to the rights and claims of the absent parties." The deceased member whose certificate of insurance is sought to be collected was not a party and the decree was without prejudice to his rights, and neither he nor his beneficiary, the defendant in error, is bound by it.

BRIEF AND ARGUMENT.

The judgment of the Supreme Court of Nebraska should be sustained:

1. For the reason that there is no federal question involved.

2. For the reason that the plaintiff in error society did not file with the Auditor of Public Accounts of Nebraska a certified copy of its constitution and by-laws, therefore, such constitution and by-laws were not in force in Nebraska.

3. For the reason that the plaintiff in error society did not file a certified copy of its amendment to its constitution changing the rates with the auditor of public accounts of the state of Nebraska, and therefore, said amendment and said rates were not in force in the state of Nebraska.

4. For the reason that the plaintiff in error society at the time of adopting the amendment of 1910 to its constitution changing the rates did not have a representative form of government as required by the laws of Nebraska.

Upon any one of these grounds the judgment of the Supreme Court of Nebraska must be sustained and the arguments advanced, and the authorities cited by plaintiff in error do not entitle it to the relief prayed.

Federal Question.

Unless a federal question is involved this court is without jurisdiction.

In *Murdock* v. *Mayor and Alderman of Memphis*, 20 Wall. 590, 22 L. Ed. 429, in determining its jurisdiction in cases of this kind this court laid down the following rules:

> "(a) That it is essential to the jurisdiction of this court over the judgment or decree of the state court, that it shall appear that one of the questions mentioned in the statute must have been raised and presented to the state court; that it must have been decided by the state court against the right claimed or asserted by plaintiff in error under the constitution, treaties, laws or authority of the United States; or that such a decision was necessary to the judgment or decree rendered in the case.
>
> "(b) These things appearing, this court has jurisdiction and must examine the judgment, so far as to enable it to decide whether this claim of right was correctly adjudicated by the state court.
>
> "(c) If it finds that it was rightly decided, the judgment must be confirmed.
>
> "(d) If it was erroneously decided, then the court must further inquire whether there is any other matter or issue adjudged by the state court; sufficiently broad to maintain the judgment, nothwithstanding the error in the decision of the federal question. If this be found to be the case, the judgment must be affirmed, without examination into the soundness of the decision of such other matter or issue.

"(e) But if it be found that the issue raised by the question of federal law must control the whole case, or that there has been no decision by the state court of any other matter which is sufficient of itself to maintain the judgment, then this court will reverse that judgment, and will either render such judgment here as the state court should have rendered, or will remand the case to that court for further proceedings, as the circumstances of the case may require."

The Act of Congress creating the plaintiff in error society authorized it to have a constitution and to amend it, provided, however, that such constitution and amendments thereto should not in any way conflict with the laws of the United States or of any state. This act is so clear as not to require any elucidation or construction. If its constitution or any amendment thereto conflicted with the law of Nebraska that law controlled, and the constitution in that respect or its amendment was inoperative in the state of Nebraska.

The laws of Nebraska, Section 22, Chapter 47, Acts of 1897, required societies of this character to file a certified copy of its constitution and by-laws, and when amendments thereto were made to file certified copies of such amendments with the auditor of public accounts. There is no proof that such copies were filed as required, and neither the constitution or any amendment thereto in the absence of such filing was in force in Nebraska. Therefore the Supreme Court of Nebraska decided adversely to the contention of plaintiff in error. The burden was on the plaintiff in error to prove the filing of such copies and in the absence of such filing the plaintiff in error was not entitled to the benefit of the provisions of its constitution or any amendment thereto, and there was no proof before the Supreme Court of Nebraska entitling plaintiff in error to the provisions of such constitution and amendments thereto, and the judgment of the Supreme Court of Nebraska rests upon that ground and not upon any federal question.

In *Allen* v. *Arguimbau*, 198 U. S. 149, 49 L. Ed. 990, this court held:

> "The Supreme Court of the United States will not take jurisdiction of a writ of error directed to a state court, where the judgment of that court rests on two grounds, one of which does not involve a federal question, or where it does not appear on which of the two grounds the judgment was based, and the non-federal ground is sufficient in itself to sustain the judgment."

It will be observed that in that case this court lays down the rule that where the judgment of the state court rests on two grounds, one of which is not a federal question or where it does not appear on which of the two grounds the judgment was based, the non-federal ground is sufficient in itself to sustain the judgment, and the writ of error will be denied. Obviously, the failure on the part of the plaintiff in error society to file certified copies of its constitution and the amendments thereto is clearly sufficient to sustain the judgment of the Supreme Court of Nebraska.

In *Leathe* v. *Thomas*, 207 U. S. 93, 52 L. Ed. 118, this court held:

> "It is admitted that the general and well settled rule is that in a case coming from a state court this court can consider only federal questions, and that it cannot entertain the case unless the decision was against the plaintiff in error upon those questions. *Murdock* v. *Memphis*, 20 Wall. 590, 22 L. Ed. 429; *Sauer* v. *New York*, 206 U. S. 536, 546, 51 L. Ed. 1176, 1181, 27 Sup. Ct. Rep. 686. It is admitted further, that a decision upon those questions must have been necessary to the decision of the case, so that, if the judgment complained of is supported also upon other and independent grounds, the judgment must be affirmed or the writ of error dismissed, as the case may be. *Murdock* v. *Memphis*, *supra*. But *Murdock* v. *Memphis* does not stop there. It further establishes that when the record discloses such other and completely adequate grounds this court commonly does not inquire whether the decision upon them was or

was not correct, or reach a federal question by determining that they ought not to have been held to warrant the result. 20 Wall. 590, 635, 22 L. Ed. 429, 444; *Eustis* v. *Bolles*, 150 U. S. 361, 369, 37 L. Ed. 1111, 1113, 14 Sup. Ct. Rep. 131; *Castillo* v. *McConnico*, 168 U. S. 674, 679, 42 L. Ed. 622, 624, 18 Sup. Ct. Rep. 229."

Under this holding the contention of the plaintiff in error is settled against it.

In *Arkansas Southern Railroad Company* v. *German National Bank*, 207 U. S. 270, 52 L. Ed. 201, this court again held:

"But, according to the well-settled doctrine of this court with regard to cases coming from state courts, unless a decision upon a federal question was necessary to the judgment, or in fact was made the ground of it, the writ of error must be dismissed. And even when an erroneous decision upon a federal question is made a ground, if the judgment also is supported upon another which is adequate by itself, and which contains no federal question, the same result must follow, as a general rule. Moreover, ordinarily this court will not inquire whether the decision upon the matter not subject to its revision was right or wrong. *Murdock* v. *Memphis*, 20 Wall. 590, 22 L. Ed. 429; *Hale* v. *Akers*, 132 U. S. 554, 33 L. Ed. 442, 10 Sup. Ct. Rep. 171; *Leathe* v. *Thomas*, Nov. 11, 1907, 207 U. S. 93, ante, 118, 28 Sup. Ct. Rep. 30. Therefore, if we should be of opinion, as we are, that the supreme court rests its judgment upon principles of common law as it understood them, we should go no farther, although that court also upheld and relied upon the statute, whether, in our opinion, its views were right or wrong."

To the same effect is the holding of this court in *Waters-Pierce Oil Company* v. *Texas*, 212 U. S. 112, 53 L. Ed. 431.

The contention that the construction of the Act of Congress creating the plaintiff in error society was involved in its decision by the Nebraska Supreme Court, and that the same was adversely there decided is without foundation. The

act itself provides that any provisions of its constitution or any amendments thereto must not conflict with the laws of any state in which the society seeks to do business. This requires no elucidation or construction.

SOCIETY MUST FILE CERTIFIED COPIES OF CONSTITUTION AND AMENDMENTS.

The plaintiff in error society as to the state of Nebraska is a foreign corporation. The membership of the defendant in error's decedent in the insurance department of the plaintiff in error began in 1885, while the said decedent was a resident of Nebraska and a member of a subordinate lodge of the plaintiff in error, shows that the plaintiff in error was doing business in the state of Nebraska at that time (Tr. p. 32); and apparently continued to do business in said state until the commencement of this action and later. Section 8, Laws of Nebraska, Chapter 47, for the years 1897, provided, "all such societies organized under the laws of this state or of any other state, territory or province and now doing business in this state, may continue such business provided they hereafter comply with the provisions of this act." Sections 10 and 11 of the same act require such associations to file reports and appoint the auditor of public accounts of the state of Nebraska to be its attorney in fact, upon whom process in any action against it might be served. Section 22 of the same act required, "every such society shall file with the auditor of public accounts a copy of its constitution and by-laws, duly certified to by the secretary or corresponding officer and before any amendment, change or alteration thereto shall take effect or be in force a copy of such amendment, change or alteration, duly certified to by its secretary or corresponding officer, shall be filed with the auditor of public accounts."

The burden rested upon the plaintiff in error to prove not only that it was licensed to do business in Nebraska, but that it had complied with requirements of the laws of Ne-

braska. There is no evidence, either by proof or stipulation, that copies of the constitution or the amendment raising the rates were ever filed as required by the laws of Nebraska. Upon page 71 of plaintiff in error's brief it is stated that these documents were filed, but this statement is erroneous and is absolutely without foundation in fact.

In the case of *Knights of Maccabees* v. *Nitsch*, 69 Neb. 372, 95 N. W. 626, construing and applying Section 22, Chapter 47, Laws of Nebraska 1897, requiring the filing of copies and there referred to as Section 112, Chapter 43, Comp. St. 1901, the Supreme Court of Nebraska held:

> "The provision in said section that, before any amendment to or alteration in the constitution or by-laws of such an association shall take effect or be in force, a copy of the amendment or alteration, duly certified, must be filed with the auditor of public accounts, is not unconstitutional, as impairing the obligation of contracts, when applied to a benefit certificate issued prior to the statute, and expressly subject to all future changes in or amendments to the by-laws of the association."

That court also there held that this section applied to associations formed and organized in other states. In that case it was further held:

> "When, after the enactment of said section, the association desired to amend its by-laws, it had only to record the amendment in the manner prescribed by the statute. It is well settled that statutes requiring instruments to be filed or recorded, and making them invalid, or postponing them to instruments subsequently executed, in case they are not so filed or recorded, are not unconstitutional, as impairing the obligation of contracts, with respect to pre-existing instruments. *Jackson* v. *Lamphire*, 3 Pet. 280, 7 L. Ed. 679; *Vance* v. *Vance*, 108 U. S. 514, 2 Sup. Ct. 854, 27 L. Ed. 808; *Weil* v. *State*, 46 Ohio St. 450, 21 N. E. 643; *Bird* v. *Keller*, 77 Me. 270; *Stafford* v. *Lick*, 7 Cal. 479; *Varick* v. *Briggs*, 6 Paige, 323."

In the case of *Hart* v. *Knights of Maccabees*, 83 Neb. 423, 119 N. W. 679, the Supreme Court of Nebraska held:

> "A fraternal insurance company cannot have the benefit of its by-laws and amendments thereto, defending against a death claim, unless certified copy of such by-laws and amendments have been filed with the Auditor of Public Accounts."

That court in passing upon that case said:

> "There is no evidence coming from the grand record keeper, or from the office of Auditor of State, or from any other source, that these laws were ever filed in the office of the Auditor of State, or that the defendant order had taken any steps which would make their laws competent evidence in this state in defense of a suit brought on a certificate of membership."

That court further held:

> "It is familiar law that no presumption will be indulged in favor of a forfeiture, and the burden of proof, where the society seeks to escape liability on that ground, is upon the society. An allegation in the petition that all the conditions of the contract were fulfilled by the assured even when denied by the answer, does not impose on the plaintiff the burden of proving that each condition was fulfilled; but, when the breach of any particular condition is relied on as a defense the burden of proving it is upon the society. 29 Cyc. 232."

That court there further observed and held:

> "As we have seen none of these laws or regulations were in force in this state because no copy of such laws were on file with the auditor of state in 1902, when the deceased became a member and the revised laws of 1904 which were filed with the auditor were not properly certified. This was fatal to the defense offered."

In the case of *Metzger* v. *Royal Neighbors of America*, 86 Neb. 61, 124 N. W. 913, the Supreme Court of Nebraska followed the rule laid down and above quoted in the case of *Hart* v. *Knights of Maccabees*. In the Metzger case it

was stipulated that the by-laws had been amended and that copies should be admitted in evidence without objection, except materiality or relevancy. The court there held:

> "The 1901 by-laws and the by-laws as amended in 1903 and 1905 were introduced in evidence, but there is no proof that they were filed in the office of the Auditor of Public Accounts, and hence they are immaterial for the purposes of this case."

In *Hart* v. *Knights of Maccabees of the World*, 83 Neb. 423, 119 N. W. 679, it was suggested at the bar that the aforesaid stipulation waive proof of the filing of the amended by-laws, but the argument is not sound. By stipulating plaintiffs' counsel only relieved the defendant of proving the adoption of the by-laws and amendments thereto.

In this case the stipulation between the parties went no farther than to stipulate that the plaintiff in error society had adopted certain by-laws and amendments thereto.

In *Tomson* v. *Iowa Traveling Men's Association*, 88 Neb. 399, 129 N. W. 529, the Supreme Court of Nebraska again confirmed its rule in construing said Section 22 laid down in the case of *Hart* v. *Knights of Maccabees* and went farther and held:

> "That rule applies to all fraternal insurance companies doing business in this state, whether domestic or foreign, and whether licensed to do business in the state or not."

From these holdings of the Supreme Court of Nebraska it is clear and cannot be successfully disputed that when the plaintiff in error society failed to file copies of its constitution and by-laws, or its amendments, or to make proof that this law had been complied with, it precluded itself from the benefit of any of the provisions of its constitution or amendments thereto as constituting any defense to the action of defendant in error to enforce his rights under the certificate of insurance issued to his decedent.

Statutes Regulating Foreign Corporations.

The rule that a state may impose on a foreign corporation, as a condition of coming into and doing business within its territory, any terms, conditions, and restrictions it may think proper, not repugnant to fundamental laws is so firmly established that it may be regarded as elementary. In *Paul* v. *Virginia*, 8 Wallace 168, 19 L. Ed. 357, this court held:

> "States may exclude a foreign corporation entirely or they may exact such security for the performance of its contracts with their citizens as, in their judgment, will best promote the public interest."

And held further:

> "A law of a state requiring insurance companies of other states to file security before they can issue policies in the state is constitutional."

In *Ducat* v. *The City of Chicago*, 10 Wallace 410, 19 L. Ed. 972, this court held "a state has power to discriminate between its own domestic corporations and those of other states, desirous of transacting business within its jurisdiction." It will be observed that this court there held that a state may by its legislation even discriminate against a foreign corporation.

In *Doyle* v. *Continental Insurance Company*, 94 U. S. 535, 24 L. Ed. 148, this court held:

> "A state has the right to impose conditions on the transaction of business within its territory by an insurance company chartered by another state, which are not in conflict with the Constitution or laws of the United States."

And it further held:

> "It has the right entirely to exclude such corporations from its territory, or having given a license, to revoke it, in its discretion, for good cause or without cause."

In *Prudential Insurance Company* v. *Cheek*, 259 U. S. 530, 66 L. Ed. 1044, this court held:

> "A foreign corporation, though not waiving any constitutional objections by coming into the state to do business therein has no valid objection to such reasonable regulations as may be prescribed for domestic corporations similarly circumstanced."

In *Interstate Amusement Company* v. *Albert*, 239 U. S. 560, 60 L. Ed. 439, this court held:

> "A foreign corporation doing local business within the state may, consistently with the commerce and due process of law clauses of the Federal Constitution, be required to file a copy of its charter with the Secretary of State, conformable to Tennessee Laws 1895, Chapter 81, as a condition precedent to its right to sue in the state courts upon a contract made in its conduct of such business."

In that case this court held:

> "That without conforming to such statute such foreign corporation could not sue in the state courts."

The Supreme Court of Nebraska has held consistently with this rule, that unless such copies are filed the benefit of any defense contained in such constitution or amendments is denied them.

In *State* v. *Insurance Company of North America*, 71 Neb. 320, 99 N. W. 36, the Supreme Court of Nebraska held:

> "The principle that a state may impose on a foreign corporation, as a condition of coming into or doing business within its territory, any terms, conditions, and restrictions it may think proper that are not repugnant to the Constitution or laws of the United States, is firmly established by the decisions of the Supreme Court of the United States. *Bank of Augusta* v. *Earle*, 13 Pet. 519, 10 L. Ed. 274: *Lafayette Insurance Co.* v. *French*, 18 How. 404, 15 L. Ed. 451; *Paul* v. *Virginia*, 8 Wall. 168, 19 L. Ed. 357; *Ducat* v. *Chicago*, 10 Wall. 410,

19 L. Ed. 972; *Doyle* v. *Continental Insurance Co.*, 94 U. S. 535, 24 L. Ed. 148."

The holding of the Supreme Court of Nebraska on this rule of law is consistent with the holdings of this court.

Representative Form of Government.

Under the laws of Nebraska a fraternal beneficiary society, insuring the lives of its members is required, among other things, to have a representative form of government. Section 1, Chapter 27, Acts of Nebraska 1897, makes this provision. It is as follows:

> "A fraternal beneficiary society is hereby declared to be a corporation, society or voluntary association formed or organized and carried on for the sole benefit of its members and their beneficiaries, and not for profit, and as such society shall have a lodge system, with ritualistic form of work and representative form of government."

The plaintiff in error society pretends to have a representative form of government. Certified copies of its constitution and amendments thereto not having been filed as required by law, the plaintiff in error society was not entitled to the provisions thereof as establishing on its part a representative form of government. There was no proof before the Supreme Court of Nebraska, of which the court was obliged to take cognizance, that it did have such form of government, and under the proof the Supreme Court of Nebraska could make no other finding or judgment than an adverse one to the society.

Granting for the purpose of argument, and argument only, that the plaintiff in error society has a form of government approaching a representative form it does not have, and did not have at the time it undertook to adopt the amendment to its constitution in 1910 raising the rates a representative form of government as required by the statutes and laws of Nebraska, where it sought to do business and did do business with defendant in error's decedent and others.

In construing and applying Section 1, Chapter 47, Acts of Nebraska for 1897, the Supreme Court of Nebraska, in *Briggs* v. *Royal Highlanders*, 84 Neb. 834, 122 N. W. 69, held:

> "A by-law providing for a forfeiture, adopted by a fraternal beneficiary association subsequent to the issuance by it of a benefit certificate, will be strictly construed against the association, and, if passed in contravention of the provisions of the statute governing such association, it will be *held* void and of no effect. *Lange* v. *Royal Highlanders*, 75 Neb. 188, 106 N. W. 224, 110 N. W. 1110, 10 L. R. A. (N. S.) 666, 121 Am. St. Rep. 786.
>
> "Where a fraternal benefit association has not complied with the provisions of Section 1, p. 266, c. 47, of the Acts of 1897, and adopted a representative form of government, its governing body is without power to adopt an edict or by-law changing the terms and obligations of a mutual benefit certificate theretofore issued to one of its members. *Lange* v. *Royal Highlanders*, 75 Neb. 196, 106 N. W. 224, 110 N. W. 1110, 10 L. R. A. (N. S.) 666, 121 Am. St. Rep. 786.
>
> "Where, under the provisions of the constitution and by-laws of a fraternal beneficiary association, the delegates to the governing body thereof, regularly elected by the members of said association, cannot of themselves, and without the participation of members of committees appointed from members outside of such delegates, legally and of right adopt, alter, or amend the edicts and laws of such association and absolutely control the government of the same, such governing body is not a representative body, and an association so constituted and governed cannot be said to have a representative form of government."

Again in *Johnson* v. *Bankers' Union of the World*, 83 Neb. 48, 118 N. W. 1104, the Supreme Court of Nebraska held:

> "Where a fraternal benefit association has not complied with the provisions of section 1 c. 47, p. 266, Acts 1897, and adopted a representative form of government, its governing body is without power to adopt a consti-

> tution or by-law, or to amend the same, changing the terms and obligations of a mutual benefit certificate theretofore issued to one of its members."

It is stipulated by the plaintiff in error society (Tr. p. 35) that the Supreme Lodge of 1910, when the amendment seeking to raise the rates was adopted, was composed of 163 members nine of whom were "Past Supreme Chancellors" and eight were "Supreme Officers," 98 were holders of certificates in the insurance department, 146 were elected by the various grand lodges; that all of these members including the nine "Past Supreme Chancellors" and eight "Supreme Officers" of the plaintiff in error society participated in the adoption of said amendment.

It is urged by the plaintiff in error in its brief that the courts of other states and the United States Court for the District of Indiana in the Holt case found and decided that the plaintiff in error society possessed a representative form of government. The statutes in question are widely at variance with the Nebraska statute. The Indiana statute governing the Holt case in that respect Section 5043, Burns' Statutes Indiana, Rev. 1914, defines a fraternal beneficiary association as follows:

> "Any association shall be deemed to have a representative form of government when it shall provide in its constitution and laws for a supreme legislative or governing body, composed of representatives elected either by the members or by delegates elected by the members through a delegates convention system, together with such other members as may be prescribed by its constitution and laws: Provided, that the elective representatives shall constitute a majority in number and have not less than a majority of the votes."

This statute is widely different from the Nebraska statute. What appears to be the form of government of the plaintiff in error society appears to conform with the Indiana statute, but it will not be contended that a federal court sitting in

Indiana or a court of a foreign state could place a construction on a statute of Nebraska regulating the operation of a foreign corporation within its borders that would amount to an estoppel.

State Interpretation Accepted.

The Supreme Court accepts the interpretation of the terms of a state statute placed upon it by the highest court of the state. This rule applies in this case, both to the Nebraska statute prescribing a representative form of government in fraternal societies, and requiring that such societies must file certified copies of their constitution and by-laws and also the amendments thereto and the interpretation and construction placed upon such statutes by the Supreme Court of Nebraska, denying such societies the benefit of any provisions in the constitution or by-laws or amendments thereto in making defense against a death claim where such societies have failed to comply with the law by filing such documents.

In *Thornton* v. *Duffy*, 254 U. S. 361, 65 L. Ed. 304, this court held:

> "The Federal Supreme Court must accept on writ of error the decision of a highest court of a state as to the meaning of state legislation and the state constitution, as though such meaning was expressed in both legislation and constitution."

In *Ward & Gow* v. *Krinsky*, 259 U. S. 503, 66 L. Ed. 1033, this court held:

> "In the exercise of the appellate jurisdiction of the Federal Supreme Court over state courts, the former court is bound by the construction of a state law adopted by its court of last resort."

In *Quong Ham Wah Co.* v. *Industrial Accident Commission*, 255 U. S. 445, 65 L. Ed. 723, this court held:

> "The construction of a state statute by the highest court of that state must be accepted by the Federal Supreme Court when testing the validity of the statute

under the Federal Constitution, on writ of error to the state court."

Holt Case.

This case was commenced in the District Court of United States for the District Court of Indiana by Joseph Holt and others "on behalf of themselves and all persons similarly situate" against the plaintiff in error society January 25, 1911. The action was brought under equity rule 38 as it then existed. The rule provided that as to persons not made parties the decree should be without prejudice to their rights. The defendant in error's decedent was not a party and his rights were in no way affected nor concluded.

It is contended by plaintiff in error that the question of the character of its organization as to having a representative form of government was there decided. So far as the court's decision in that case upon that question was concerned it could and did only decide that its form of government complied with the statute of Indiana, which, as already observed, is widely different in its terms then the Nebraska statute. The Nebraska statute defining representative form of government was not and could not be there adjudicated, and the Nebraska statute requiring such societies to file copies of its constitution and by-laws and amendments thereto was not and could not be there adjudicated. Therefore, the defendant in error and his decedent were not estopped from making the defenses; first, that the plaintiff in error society had failed to file copies of its constitution and amendments as required by the Nebraska statute. Second, that the plaintiff in error society did not possess a representative form of government as required by the statutes of Nebraska, and therefore was without authority to adopt the amendment of 1910 raising rates.

The Supreme Court of Nebraska to hold that the defendant in error and his decedent was barred and estopped under

the decision in the Holt case is no violation of the full faith and credit clause of the federal constitution.

Mims Case.

The Mims case upon which plaintiff in error places great reliance came to this court upon a writ of error from the highest appellate court of the state of Texas. The state court of Texas held that the enactment of the rate amendment of 1910 was by reason of its excessive increase void. The question of representative form of government or of the compliance with state regulations regarding filing of copies of constitution and by-laws was not involved, so that that case is not decisive of any issue in this case.

Smith Case.

The Smith case came to this court by appeal from the Circuit Court of Appeals of one of the districts of New York and the questions there presented are almost identically the same as were presented in the Mims case, and this court in deciding this case said that it was ruled by the decision in the Mims case.

Green and Ibs Cases.

The plaintiff in error relies upon the case of *Royal Arcanum* v. *Green,* 237 U. S. 531, 59 L. Ed. 1089, as one of its authorities supporting its contention that the Supreme Court of Nebraska violated the full, faith and credit clause in not holding that the decision in the Holt case was an estoppel. In this, the Green case, the home state of the society in construing its charter held it had authority to amend its by-laws so as to increase its assessment rates and that the courts of the state of New York were bound to give credit to such decision. That is all that is decided in this case.

For the same purpose the plaintiff in error relies upon the decision of this court in *Hartford Life Insurance Co.* v.

Eliza Ibs, 237 U. S. 662, 59 L. Ed. 1165. In that case also there was a decree by the court of the home state adjudging that the corporation was authorized to make advances from its mortuary funds and to replenish the same by subsequent assessments upon its members, and that failure on the part of the court in the state of Minnesota to recognize this decree was a violation of the full, faith and credit clause of the federal constitution. That is all that is decided in that case.

We submit to the court that no federal question is here involved, that the judgment of the Supreme Court of Nebraska is just and correct and should be sustained; and that the writ of error should be denied or the judgment of the Supreme Court of Nebraska affirmed.

Respectfully submitted,

D. W. LIVINGSTON,
C. F. REAVIS,
Attorneys for Defendant in Error.